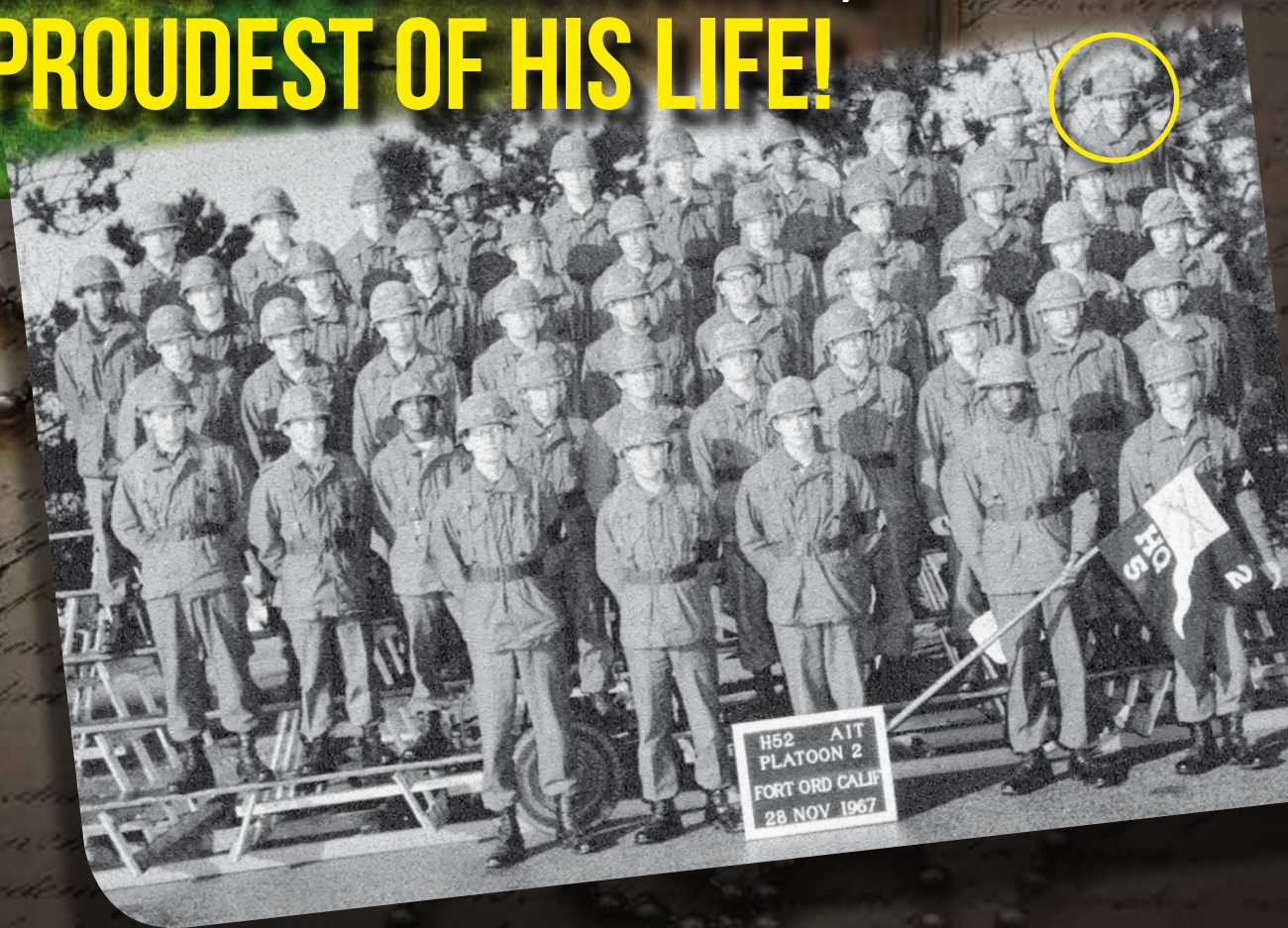


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**INDEPENDENT CONTRACTOR OR EMPLOYEE:
THE BATTLE BETWEEN THE
COMMON LAW TEST AND THE CWMA**

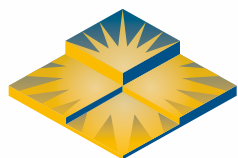


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Berks County Bar Association

544 Court Street, P.O. Box 1058

Reading, PA 19603-1058

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COVER: Jay N. Abramowich, Esquire, in 1967, after graduating from Dickinson School of Law and taking the bar examination, joined the Army.

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President's Message

REMEMBERING SOME GOOD EXAMPLES



President Althouse and his father, BCBA Past President Ralph Althouse

When I wrote my last President's message, my proposed title was "Your President is on Summer Vacation." Our Executive Director changed the title because it is his opinion that the Bar Association President is never on vacation. This time I have chosen what I think is a more serious subject, although while I always hope to have issues of great legal weight and significance to discuss, this time also finds me musing in a nostalgic vein.

It was suggested to me that I should write a column about my father who practiced law for many years in Reading. As my father was the first in the line of Bar Presidents to pass me the gavel a year ago, I find a certain symmetry in coming back to him in my last column. That led me to think of the many other fine lawyers of our Association and the example they provide for us all. Knowing my father's biography better than those others, he will have to serve as an example for all in this article.

Ralph J. Althouse, Jr. was born in Emmaus, Pennsylvania in 1931. This was during the height, or depth, if you prefer, of the Great Depression. While living in straitened circumstances, the Althouse

family was able to survive the Depression without tragic consequences, although my father was left with a lifelong aversion to potato soup. That led me to believe there was not always plenty in the Althouse residence, despite my father's firmly held belief that Emmaus was a sparkling light in the universe.

The youngest of five children, by a considerable margin, he attended Emmaus High School. He was the first of his family to graduate from high school. So far as I know, from the descriptions he has given me over the years, Emmaus High School was an institution of learning on par with Oxford or the Sorbonne. All of the children were above average and the teachers were all apparently either nuclear physicists, Rhodes scholars or both.

Being from a family of modest means, he had no real inkling that he would go to college. Fortunately, a neighbor took an interest in him and suggested otherwise. My father was 6'7" and played basketball for the Emmaus High School team. As a result of these talents, he was able to attend Muhlenberg College on a partial basketball scholarship and a partial academic scholarship. I have the feeling that college tuition didn't cost quite as much then as it does now.



Naturalization Ceremony: Keynote speaker, Adrian Grieve, Executive Director of the Red Cross; Judge Timothy J. Rowley, who presided; and President Althouse

In college, my father met my mother and romance blossomed. Upon graduating from college, my father was called to public service. Although the Korean War was not in an active shooting phase, there was an armistice and no one really expected it to last 50 plus years. Accordingly, the Army was beefing up its numbers and my father joined many young men who found themselves in khaki.

During basic training, my father met a fellow basketball player, Pete Carrill, who played basketball at Lafayette and went on to be the famed coach of Reading High and Princeton. He and my father were acquainted from competing against each other. Pete contacted my father and assured him that he would not have to go overseas; but instead Pete was forming a team that would go up and down the East coast playing at Army bases, against the local teams; assuring him that life would be easy with no reason to acquire a taste for kimchi. A couple of days later, my father received orders to report to Korea.

Fortunately, there was no real shooting. Almost as fortunately, as a morale building tactic, the Army decided that a team of college basketball players would be formed and would go around playing at various service bases around the country. That idyllic life was not to last as a serpent entered the garden. A congressman on tour found out that some basketball players were having an easy time of it while his son was sitting around in a trench. The basketball tour was over and the team dispersed to more serious duties.

My father then received orders to report to an army hospital as a clerk. He claims that he was like Radar from MASH, but for anyone who has ever met my father, that is very hard to picture.

Continued on page 6

Having survived Korea, perhaps because North Korea heard of the Army's basketball prowess and thinking that it was the better part of valor to continue the armistice rather than start a shooting war, my father was able to return home by way of Japan and Okinawa. For reasons that are obscure to me, he enrolled at Georgetown Law School. The source of my bemusement will become obvious.

He and my mother were also married at this time and led a poor student's existence in Washington. Employment as cafeteria workers, proofreaders for the National Rifle Association, and the like helped supplement a meager GI bill income.

While in Washington, my mother began to suffer from some indigestion and stomach trouble and was fearful that she had an ulcer. That ulcer actually turned out to be me. I expect that it was not the only time that I was the cause of some upset to my parents.

My father successfully navigated the difficult course requirements of Georgetown and sat for the Pennsylvania Bar examination. While attending the Cram Course, as it was then invariably called, my father met our own Judge Albert Stallone with whom he was to later become better acquainted in practice and to appear before in Berks County.

After successfully passing the Bar, my father undertook serving the then-mandatory term under his preceptor in Allentown. His preceptor was an attorney of high standing who took my father under his wing and taught him much about the practice of law. In those days it was required that young lawyers hang around the courthouse and undertake criminal appointments when needed. My father befriended another young lawyer who went on to become a figure of note, the Honorable Edward Cahn. He and my father went to the President Judge of Lehigh County and convinced him that it would be more efficient if the two of them would work together on criminal appointments.

Accordingly, thereafter, whenever they served in this capacity, they were appointed as co-counsel in a case. Unfortunately, the system then in place did not provide the same opportunity for preparation as these days. Back then, you were expected to appear in the Criminal Court and you were appointed to cases as they were called for trial. My father and Judge Cahn were



President Althouse with Selina MacLaren, Fellow with the Reporters Committee for the Freedom of the Press, who spoke on "Leaks, Lies and Litigation: The Press's Challenges in Holding Government Accountable" for the Berks County Bar Association Lecture in Contemporary Legal Issues at Albright College

appointed together and would have to figure out the case as they went. They were assigned a case and immediately sent to a courtroom for jury selection.

One of them would participate in the jury selection process while the other interviewed the defendant and tried to figure out what was going on in the case. With that interview complete, the second lawyer would then undertake to provide an opening statement while the first lawyer interviewed the witnesses. The first lawyer would then examine such witnesses as he had been able to interview while the second lawyer then . . . , well, you get the idea. It was a simpler time in the practice of criminal law and thinking on your feet was required.

During this time frame, my father's preceptor found himself in the enviable position of having too much work to handle, including, particularly, a couple of clients in Reading. Rather than try and service these clients out of Allentown, the preceptor generously asked my father to open an office in Reading and take over representation for these clients. My father did so and, immediately before I started kindergarten, we moved to Reading.

My father set up shop at 214 North Sixth Street, which was then a street full of lawyers. Solo practitioners, small firms, title insurance companies and accountants were all located on this street.

Dad enjoyed ten years of solo practice on North Sixth Street. Back then you were also expected to serve as an assistant district attorney which was a true part-time position. That led to some involvement in politics, including several

notable campaigns for district attorney where the Honorable Richard Eshelman and Charles Guthrie led the Republican tickets.

In 1970, my father was presented with the opportunity to join Bingaman, Hess, Coblentz & Bell and did so.

In 1978, he served as President of the Bar Association (then the youngest to serve in such office) and was active in the Pennsylvania Bar for many years. A couple of notable things stand out from those years.

My father did not drink but was a member of a poker group where it seems everyone else did. Many people (who have been deservedly portrayed as Legends of the Bar) including Manny Dimitriou, Clint Najarian, Roderick Snyder, Ed Kershner, Charlie Derr, Dave Kozloff, Bill Bernhart, John Boccabella, Jack Mancuso, and probably others whom I have forgotten, would regularly attend the poker games. The game was a floating game going from house to house and it was always a treat when this crew would descend upon our house. The house would smell of cigar smoke, beer and whiskey for days.

My father maintained that he had a distinct advantage because he did not drink alcohol. He claimed, with no substantiating evidence, that he would place \$200 in a cigar box at the beginning of the poker season and play with it throughout the year and the profits realized from poker always paid for our Christmas presents.

Another memory of those days is the famous election bets. It was the Republicans against the Democrats. My father and John Bradley, Sr. represented the Republican contingent while John Hoffert and Manny Dimitriou represented the Democrats. Local elections may have been a little more heated then; they certainly stirred more interest. It was especially interesting for these four because the losers were obligated to buy dinner for the winners. As you would expect, every year the stakes went up. One memorable evening the winners were picked up at their offices by a limousine, with champagne already on ice, and transported to the Oley Valley Inn, then a restaurant of high repute. They enjoyed a sumptuous dinner and probably adjourned to several other establishments before finishing at the West Reading Diner for breakfast. My father being the non-drinker was then

tasked with driving everyone home.

As you have seen from my prior column, I have fond memories of days past. When it was time to leave the nest, I also attended Muhlenberg College. I did not have the distinguished career that my father did, but I did have the chance to participate in a sport at the collegiate level and will always maintain to young people that the opportunity to participate in a sport at a small college will enhance your educational experience.

Upon graduating from college, I then attended Villanova University School of Law. This, of course, is the reason for my disdain for my father's attendance at Georgetown. Villanova and Georgetown were and remain bitter rivals on the basketball court. I would have thought that with the cash motive, given my attendance at Villanova Law, and my sister's attendance at Villanova University for undergraduate studies, my father would have released his allegiance to Georgetown. He did not always vote with his wallet.

Surprisingly enough, I was able to graduate from law school and pass the bar exam. I had a great experience clerking for the Honorable William A. King, Jr.



President Althouse with Photographer and Attorney John Elder during the BCBA Reception at Retrospective John Elder showing in the GoggleWorks.

in the United States Bankruptcy Court for the Eastern District of Pennsylvania for two years. That experience led to me being asked to return to Reading and join Bingaman Hess, which I did in 1983.

For more than ten years I had a chance to work together with my father. At age 62, he retired on his birthday and, as I like to say, tap danced out the door. It is hard to believe how long ago that is and to remember I have practiced far longer at Bingaman Hess than he did.

The purpose of this column is not to wax nostalgic but to remind all of us lawyers to look around. There are many

examples of generous and knowledgeable practicing lawyers, past and present, who can and should serve as role models for all of us. I have mentioned many in this column, but I know there are many more. I don't mean to slight anyone by not mentioning them because there are so many lawyers in Berks County who have always been willing to help, guide, or assist a less experienced lawyer.

This is a practice I hope I have followed and one I encourage all of our members to follow as well. There is always going to be an uncertain new lawyer needing a friendly pat on the back or word of advice. I believe it is part of our obligation to the profession to fill that need.

My father and many others served as a lifelong example of the way things should be done. I was lucky to have a father in the profession, so I may have a better perspective, but I have always thought that experienced lawyers in Berks County were more than willing to provide a word of advice or give a new lawyer a break. All of us "older" lawyers need to be mindful of this tradition. You never know when a word of kindness or encouragement will help a fellow member of the profession. ■

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INDEPENDENT CONTRACTOR OR EMPLOYEE: THE BATTLE BETWEEN THE COMMON LAW TEST AND THE CWMA

By Gabriela Raful, Esquire

How can an “employer” in the construction industry succeed in not paying workers’ compensation by claiming the injured person is an independent contractor and not an employee? The answer is not as simple as labeling the worker as “independent contractor.” The nature of the relationship is a question of law that is determined on a case by case basis. To make such determination, are courts applying the Construction Worker Misclassification Act (“CWMA”) or the common law test?

In 2010, the Pennsylvania legislature enacted the CWMA. Section 933.3 establishes the criteria for when a worker in the construction industry may be classified as an “independent contractor” as opposed to an employee for purposes of workers’ compensation and unemployment compensation. 43 P.S. § 933.3. The significance of the distinction is that putative employers are not responsible for providing workers compensation coverage for independent contractors under the Pennsylvania Workers’ Compensation Act (“WCA”). The distinction has a corresponding, but distinct, set of implications in the context of personal injury claims, as an exclusivity of the WCA prevents an employer from being held liable in tort. *See, e.g. Patton v. Worthington Associates, Inc.*, 89 A.3d 643 (Pa. 2014).¹

An injured worker who petitions for workers’ compensation benefits has the burden to establish an employer-employee relationship. *See* 77 P.S. § 22; *Universal Am-Can, Ltd. v. W.C.A.B. (Minteer)*, 762 A.2d 328, 330 (Pa. 2000). To make such determination, courts apply a common law test based on principles of a master-servant relationship. *Universal Am-Can*, 762 A.2d at 330. The common law test considers various factors, including: control over the work completed and the manner in which it is to be performed, terms of the agreement between the parties, the nature of the work, the skill required, who supplied the tools, payment by the time or by the job, whether the work is part of the regular business of the employer, and the right to terminate the employment at any time. *Hammermill Paper Company v. Rust Engineering Company*, 243 A.2d 389, 392 (1968).

In contrast to the WCA, the CWMA provides a specific set of statutory requirements that must be met in order for a worker to be classified as an independent contractor in the construction industry. Those requirements include: having a written contract; working free from control or direction; and customarily engaged in an independent trade, occupation, profession or business. 43 P.S. § 933.3. The CWMA further provides that an individual is customarily engaged in an independently established trade, occupation, profession or business only if: (1) He possesses the tools, equipment, and other assets necessary to perform the services independent of the person for whom the services are performed; (2) The individual shall realize a profit or suffer a loss; (3) The individual performs the services through a business in which the individual has a proprietary interest; (4) The individual maintains a business location that is separate from the location of the person for whom the services are being performed; (5) The individual previously performed or holds himself as a person who is able, and in fact is able, to perform the same or similar services for another; (6) The individual maintains liability insurance during the term of this contract of at least \$50,000. *Id.*

Failure to withhold income taxes or pay unemployment compensation contributions or workers’ compensation premiums is **not** to be considered in the analysis. 43 P.S. § 933.3(c). An individual who is an independent contractor, as defined under the Act, will not be considered an employee for purposes of the Workers’ Compensation Act. 43 P.S. § 933.3(d).

The most recent decision to examine these CWMA requirements was *D&R Construction v. W.C.A.B. (Suarez, Travelers Insurance Co., Uninsured Employers Guaranty Fund, & T & L Development)*, 1558 C.D. 2016, 2017 WL 3254789 (Pa. Cmwlth. Aug. 1, 2017). In *D&R*, the Commonwealth Court examined the distinction between the criteria set forth in the CWMA for classifying a worker as an independent contractor and the traditional common law analysis.

¹ The “independent contractor” label also has implications for landowners, as there is a general rule against liability of landowners for acts of omissions of independent contractors and their employees. *See generally* §§ 409–414 of the Restatement (Second) of Torts.

I. The D&R Construction Decision

In *D&R Construction*, the injured worker petitioned for workers' compensation for an accident which occurred on August 28, 2010. The WCJ denied and dismissed the claim petitions, concluding that the Claimant was an independent contractor and not an employee at the time of injury. The Claimant appealed. The Appeal Board issued an opinion and order reversing the WCJ's decision. The Board found that the Claimant was an employee and not an independent contractor at the time of injury. *D&R Construction*, 2017 WL 3254789 at *1-2.

Though the CWMA was not yet in effect at the time of the Claimant's injury,² the Board considered the independent contractor criteria set forth in Section 933 of the CWMCA in its analysis of whether the worker was an employee or independent contractor.

On appeal the Commonwealth Court considered two issues: (1) whether the test applying the criteria for determining whether a worker in the construction industry is an independent contractor under the 2010 CWMA could be applied retroactively, and (2) whether the independent contractor criteria under the CWMA could be considered as clarifying or instructive of the common law test. *D&R Constr.*, 2017 WL 3254789 at *2.

a. Retroactive Application

On the first issue, the Commonwealth Court concluded that, by applying the CWMA's independent contractor criteria,

²The CWMA was enacted October 13, 2010, and became effective on February 20, 2011. Thus the Claimant's injury on August 28, 2010 preceded both the date of enactment and the date the Act went into effect.

specifically those factors not consistent with the common law test, the Board had essentially applied the CWMA retroactively. It found that this retroactive application of the CWMA constituted an error of law, and remanded the case. *Id.* at *2, 4.

The *D&R* Court explained that, unlike the common law test, each factor of the CWMA independent contractor criteria is mandatory, such that each requirement must be established in order for the claimant to be considered an independent contractor. *D&R Constr.*, 2017 WL 3254789 at *3. The common law test, in contrast, requires a weighing of factors, with no one factor being dispositive, however, control is "a primary factor." *Id.* In support of this conclusion, the Court points to the statutory language "only if" of Section 933.3 of the CWMA and a previous decision examining the Act, *Staron v. W.C.A.B. (Farrier)*, 121 A.3d 564 (Pa. Cmwlth. 2015), where Judge Bonnie Brigance Leadbetter's concurrence noted that each factor of the CWMA criteria must be established in order for a claimant to be deemed an independent contractor. *Staron*, 121 A.3d 564 at 569.

Consequently, the Court found that the CWMA alters the elements of proof, which makes this a substantive change. As it affects substantive rights, it could not be retroactively applied. *D&R Constr.*, 2017 WL 3254789 at *3.

b. CWMA as Clarifying or Instructive for the Common Law Test

The second issue was whether the independent contractor criteria under the CWMA could be considered as clarifying or

instructive of the common law test. *D&R Constr.*, 2017 WL 3254789 at *2. In this issue, the court went on to expressly state that the CWMA factors could not be considered as instructive or clarifying of the common law test for establishing an employer-employee relationship, because doing so would essentially displace the common law test and lead to the application of the CWMA factors in other industries outside of the construction field. *Id.* at *5-6.

The court specifically criticized the Appeal Board's consideration of the lack of evidence for a written contract, and that the worker maintained a separate business location – all elements of the CWMA but not of the common law analysis. *Id.* at *12. The court also reasoned that while the CWMA excludes consideration to wage and payroll deductions, the common law test considers those factors. *Id.* at *4.

The Appeal Board in its decision noted that even not considering the CWMA factors, the claimant would be considered an employee under the common law test. The Court, however, felt that the Board's decision had been colored by its consideration of the CWMA factors and thus, remanded the case. *Id.* at *5.

The *D&R* Court also makes clear that it refuses to adopt the Board's consideration of the CWMA factors as "instructive" or clarifying of the common law test because doing so would lead to the factors being applied in other industries, which is "well beyond the Legislature's intention that the CWMA apply only to the construction industry." *Id.* In support of this proposition, the Court cites its recent opinion in *Dep't of Labor & Indus. v. Workers' Comp. Appeal Bd. (Lin & Eastern Taste)*, 155 A.3d 103 (Pa. Cmwlth. 2017).

In *Lin*, the Court held that the worker was an independent contractor, and not an employee of the restaurant that hired him to do remodeling work. In support of its conclusion, the Court explains that the determination of whether the CWMA applies to a given situation is based on the nature of the occupation or industry of the putative employer, rather than the employee. *Lin*, 155 A.3d at 111-114. As such, the court concluded that the fact that the claimant performed construction work did not conclusively put his claim within the scope of the CWMA because the putative employer was a restaurant and therefore not in the "construction industry." *Id.* at 114.

II. Omitted or Forgotten? The Hawbaker Decision

Conspicuously missing from the D&R discussion was any reference to its then most recent decision examining the CWMA, *Hawbaker v. W.C.A.B. (Kriner's Quality Roofing Services & UEGF)*, 159 A.3d 61 (Pa. Cmwlth. 2017), *reargument denied* (Apr. 3, 2017).

In *Hawbaker*, the claimant petitioned for workers' compensation benefits for injuries suffered when he fell off a roof while working for Kriner in 2013. *Hawbaker*, 159 A.3d at 64. The facts of *Hawbaker* are somewhat convoluted, but the claimant had an essentially indefinite contract to perform "roofing and general labor services" for Kriner, and was required to maintain liability insurance under the contract. The claimant supplied some of his own tools and Kriner provided others. *Id.* at 65. The parties disagreed over the extent of Kriner's control over the work, but the contract provided that Kriner would inspect the work of

the subcontractors and, if there was a problem with its quality, Claimant would have to correct it without additional payment. Kriner testified that the contract did not preclude subcontractors from doing work for other contractors or on their own. Claimant presented proof of liability insurance, but the insurance lapsed at some point. *Id.* at *64.

The Commonwealth Court examined the evidence and the WCJ's findings, including those regarding the skill required for the work, who supplied the tools, the nature of the work, who had control over the work, and whether the claimant had a separate business/trade, and concluded that the claimant was an independent contractor for purposes of both, the CWMA and workers compensation's common law analysis. *Id.*

Perhaps explaining the *D&R* court's omission, the *Hawbaker* decision is apparently inconsistent with the holding of *D&R*, as it applies factors from both the CWMA and the common law employer-employee analysis.

For instance, the *Hawbaker* Court considered the common law factors of the skill required of the job, whether the payment was by time or by the job, who supplied the tools, the nature of the work, and the control over the manner in which the work was performed, all of which are either variations of or not included among the CWMA factors.

The *Hawbaker* decision also did not address (or skirts) certain requirements under the CWMA, such as the fact that the claimant's insurance lapsed during the contract, and the lack of evidence that the claimant performed the service as part of a business in which it had a proprietary interest.

With regard to whether the claimant was "engaged in an independently established trade, occupation, profession or business," the court relied on a Facebook posting that Claimant was an "independent contractor" and his application for liability insurance which listed his name as the business. *Id.* at 71.

With regard to the control factor, the Court's analysis weighed the level of control exercised over the manner in which the work was performed (a common law analysis), despite the statutory language of the CWMA which requires that the individual be free from control or direction.

The *Hawbaker* decision is thus not readily reconcilable with D&R as *Hawbaker* considers both, the CWMA elements and the common law test, while D&R specifically rejects using the CWMA as a guide for clarifying the common law test. Perhaps the Court decided to apply both, the common law test and the CWMA, to *Hawbaker* because the incident happened after the CWMA's effective date, while the D&R fact scenario took place before its enactment. If that is the case, the Court will need to clarify it in future cases. What is clear is that the Court is not willing to retroactively apply the CWMA. It is also clear that the

CWMA cannot be applied to other industries. ■



Gabriela Raful, Esquire, is a BCBA board member and chair of the Minority Bar Section. She is an associate with Galfand Berger, LLP.



Gratified Beyond Words

By The Honorable Jill Gehman Koestel

Life is good. Two of the most incredible chapters of my life are coming to an end simultaneously. It is eerie. It is magnificent! And I have many people who I would like to thank for allowing me these experiences.


Five years ago, the members of the Berks County Bar Association elected me to be a director of their board. Despite the 8:00 a.m. meetings, which I dreaded (not a morning person!), Jill Scheidt convinced me that I would love being on the board. She was right. And the next year when I was asked by Fred Hatt to be Vice President which would start off a four-year leadership commitment, I readily agreed. I sincerely thank the membership for electing me to that position and the subsequent positions of President Elect and President (read Queen). I enjoyed, more than I can say, the honor of being your leader. I commend Gene Orlando, Tom Bell and Jesse Pleet for the leadership training I received. They were great examples. As Immediate Past President (read Queen Mother) this past year, I have had the privilege of watching current President Kurt Althouse continue the traditions and begin new initiatives to keep our organization moving forward. We have challenges ahead. I am confident that new President Joan London is prepared to lead us through them. I will forever be proud of having my portrait hanging in the gallery of Past Presidents and again I thank all of you for that honor.

Speaking of honor, I am eternally grateful for the extremely high honor imposed on me by our Governor when on June 28, 2016, I was commissioned as a Judge of the Berks County Court of Common Pleas. This did not happen in a vacuum. I thank all of my friends and colleagues who wrote letters to our Berks County State Senators and directly to the Governor to encourage my appointment. I also must thank the Berks County Commissioners for approving an appointment in general, and Senator Judy Schwank and Representative Tom Caltagirone whom I know specifically whispered my name in the ear of the Governor. After the appointment was secured and I began my 18-month stint on the bench, my judicial colleagues could not have been more gracious and helpful. I appreciate their willingness to hear my thoughts and concerns with open minds and reciprocal guidance. We have an amazing bench. Our judges are enormously efficient and hard working. Each of their individual commitment to the job is a gift to our community of which most citizens are not even aware. Our Bar Association should be continually cognizant of our judges' willingness and admirable abilities to resolve litigation. Thank you to all of them for embracing me into their ranks. I particularly would like to thank President Judge Yatron for assignments that were interesting and familiar to me, and which I thoroughly enjoyed handling.

Last, but certainly not least, I thank my family, particularly my saintly husband, Bob, who encouraged and supported all of these experiences. Sacrifices were made to allow me to simultaneously be Queen, then Queen Mother, as well as Judge these past months. I acknowledge and appreciate it all.

Reading over what I have just written, it seems like a swan song, and in effect it pretty much is. At the end of the year, I will be retiring from the practice of law. However, I am not sailing into the sunset. The board of judges has agreed to appoint me as one of the two equitable distribution masters so that I can continue to serve the family law community. Along with this part-time position, I will be devoting myself to the role of grandmother (read Monie) to Avery Koestel (who as I write this is waiting to be born) and to Lizzy and Adam Mumma. Yes, life is good. And I am grateful beyond words... but I tried. ■





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Hey, Cal, It's Been Fifty!

By Jay N. Abramowitch, Esquire

The Klan was denied a parade permit by the city. Fred Edenharter offered free representation to the Klan, and asked me, who had met him once, to be co-counsel. His cross-examination of city officials was incisive, riveting; I did mop-up. Afterward we libated at the Court Pub where we met Cal Lieberman and Russ LaMarca. It was September 1968. I was 24. After a few beers, Fred said the Klan made his skin crawl. The permit was issued; I was starting to get it!

My mind drifted to September 1964, day two at Dickinson School of Law and the inevitable field trip to Carlisle's sites of "public accommodation." A Rutgers alum, whom I played against while at Lafayette, accompanied us. We greeted each other warmly, happy to see a familiar face.

Our sojourn began at a dumpy diner on High Street. Restrooms were marked "men," "women" and "colored." Stunned, I turned to him; he showed no emotion. A bar a few blocks away had a sign in the window: "white only." My friend had to drive to Harrisburg to get his haircut. I went with him. The 1964 Civil Rights Act was enacted two months later.

By graduation day in 1967, I came to know more about the psyche of the Borough surrounding my prestigious law school. No signs but no attitude change! The "colored" still knew where they weren't welcome. Signs were replaced by stares! Nothing had changed! Carlisle was a good old southern boy town. Carlisle made my skin crawl!

I had wrongly assumed that the murder of four young black girls in Birmingham four years earlier by the Klan would be a catalyst for change. JFK and even LBJ backed the 1964 Act, as a direct result of this horror. Racial violence increased, racial prejudice deepened. It became obvious the "equal protection clause" of the 14th Amendment implicitly didn't apply to "colored."

Years later, I visited the Civil Rights Museum in Birmingham and then walked from the church to the bridge in Selma. A gloomy room in the Birmingham museum contains two life-size black and white photographs; one was a close up of James Meredith the moment he'd been shot on the road to Selma. The look of surprise and shock on his face was unsettling, unforgettable! Shot for walking on a country road! Nothing would ever change in Alabama!

The second was the iconic image of the marchers, led by Martin Luther King, Medgar Evers and Ralph Abernathy, approaching the bridge in Selma. State troopers, snarling German Shepherds and an angry, armed mob blocked their way. The look on Reverend King's face, steely, determined, unafraid; fully expecting what the marchers were confronting!

These untitled photographs encapsulated the struggle for civil rights in America. The fact that nothing would ever change did not dissuade Dr. King.

It was over an hour until I felt emotionally able to leave the museum. A visit to the church was only a walk away; I asked myself what did the murders of JFK, MLK and RFK change? Same answers as Carlisle; nothing!

A few weeks before my graduation from DLS in May 1967, it became obvious that my "draft lottery" number would be reached. I felt, ironically, that my best shot to avoid the ever-widening war in Vietnam was to enlist! A crack infantry reserve unit was based in Carlisle. I left for active duty at Fort Ord, California, four days after the July 1967 bar exam. I was in the infantry, but I thought I would be going home after several months of training! I was certain training would not present a problem; after all, I was a college athlete, in good shape and looking forward to the challenge!

Suffice to say, nineteen weeks later, I emerged from the depths of hell, twenty pounds lighter and happy to be alive! Advanced infantry training was the most grueling experience of my life. My unit consisted of a gang of teenagers from the LA draft board, Montana and North Dakota. I became a 24-year-old "father figure" to many of them, who had no home life or anything else for that matter. They all knew they were going to Nam; many were happy to have three meals a day and clean clothing to wear even if it was all green. We hadn't heard of HUP, Ke Sahn and the Tet offense. We didn't know of the profound failure of higher command, particularly "Westy," to anticipate North Vietnamese troop movement.

We had become soldiers! Graduation from advanced infantry training was the proudest of my four commencements. I thought I was going home to start my career; turns out the Army had other ideas.

The U.S.S. Pueblo was seized off North Korea in January 1968. At the time, my unit was on night maneuvers during the Monterey Pop Festival; the amphitheater allowed us to hear Jimi Hendrix, Janis Joplin, Arlo Guthrie, et al clearly from two miles away. The irony was palpable!

Two days before I was to return to my home unit in Carlisle and civilian life, I received new orders: "Arrive DaNang Air Force Base wearing khaki uniform . . ." I was going to Vietnam after all. The best laid plans . . .

Jungle school, escape and evasion training, inoculations. We were scared, but we were ready! For some reason, unknown to me, my orders were rescinded. I was to return to my home unit and await further assignment! Relief, even elation, later turned to survivor's guilt which remains to this day!

My orders changed, theirs did not; the previously mentioned names became stark reality! Kids from broken homes betrayed by high command, fought bravely, died or were seriously injured in those places in this unimaginable war. Those who ultimately returned to the U.S. couldn't wear their uniforms for fear of attack by pacifists. In some ways, Vietnam changed our nation's consciousness with regard to trusting political and higher military authority. In other, more important ways, it changed nothing. The kids that lived are in their late 60s now; the war was 50 years ago. It took almost that long to recognize the sacrifice of this generation!

In late 1968, I was admitted to practice in motions court by Judge James Bertolet. My preceptor, Henry M. Koch, Sr., Esquire, hired me after my mandatory six-month "clerkship" was waived. George Balmer, Esquire, the founding partner of Balmer Mogel Speidel and Roland, interviewed me to determine if I met the Berks Bar requirement of being "of good moral character" and worthy of admission to the Berks Bar. Years earlier a young lawyer was denied admission; I was very nervous when the interview began. Mr. Balmer was a diminutive man with coke bottle glasses. I stood at attention and he told me to sit down and relax. He took two hours of his valuable time to meet with me. We discussed everything from my undergraduate and law school record to extracurricular activities and Army service. He did most of the talking; he knew EVERYTHING about me! He took his job seriously! I was humbled when he told me I met the Berks Bar standard. He congratulated me on my "accomplishments." Why he took the time to compile this information and meet with me remains a mystery. I left his office in tears. I began to understand what it meant to be a member of the Berks County Bar and had an inkling of what my ultimate responsibility might be.

Two days later, Fred McGavin, Esquire, sent me to "motions" court. The only thing I was certain of was that I was last in line! The inimitable President Judge Warren K. Hess presided. When I approached the bench he said very complimentary things about me and welcomed me to the Bar. I thought this would be easy! I thought I was back in Mr. Balmer's office. Then, the bombshell! "Mr. Dimitriou (the newly appointed public defender) has a conflict. I'm appointing you to represent Mr. X who's charged with burglary. Jury Selection beings at 1:30," Hess said, smiling. I was stunned, scared and clueless on what to do, where to begin! John S. Speicher, Esquire, a highly respected multitiered trial lawyer whom I had never met, led me into the lawyer's lounge (I didn't know what that was) and proceeded to tell me a series of jokes that initially relaxed me, and a few minutes later had me

rolling on the floor! John was a master of the language and one of the most insightful members of our Trial Bar. His courtroom skills were legendary as was his risqué sense of humor.

He said, "Kid, tell 'em it's your first case, that you are really nervous and you are going to make mistakes; the ADA will object to your questions and the judge will sustain most of them, and ball me out because of my lack of experience. Blame that on me, not my client; Mr. X is innocent!"

That's exactly what I did! As soon as the words were uttered a surreal event occurred! The panel relaxed; I RELAXED!! I did the job and this was not a law school mock trial. The rapport lasted throughout the trial. This great trial lawyer taught me the ultimate trial tactic in four sentences! Tell the jury the truth, even if it hurts your case, look them in the eye, forget procedure, do it your way.

Years slipped by, and other trial lawyers introduced themselves to me; Fred Edenharter, Fred Brubaker, Russ LaMarca and the inimitable Cal Lieberman. They all helped me in so many ways but Cal was so kind, so skilled! For some reason he liked me; he taught me that trial law is about creating a dynamic interaction between the jury and your client; forget everything you learned in law school!

Most of these trial lawyers were highly decorated WWII veterans. They had a cavalier attitude about work and "play." They were amazing in the court room and raised holy hell outside of it. They represented people who were downtrodden and couldn't pay them. Every Christmas these clients would give them a small gift, usually in a bottle!

One day, later in his career, Cal took a position with which PJ Hess did not agree. Both had hair-trigger tempers! Neither backed down, other lawyers shuddered; Cal prevailed!

Later at the Peanut Bar, I said, "Cal, you really lost it; he's the PJ. I couldn't believe the way you were yelling at him; he might have held you in contempt!" Cal said, "What the hell is he going to do to me that will make a difference in my life? I had 8 combat jumps in Europe; contempt doesn't really rattle my cage!"

Four or five beers later, he said, "Don't try to do things the way I do; be yourself, there's only one you; think of the best way to help your client and do it no matter what! Do that for 50 years, and you'll look back on your career with pride and say: you didn't bow to anybody; do the best you can and answer only to yourself." That's the lesson of the 60s and 70s!

Hey, Cal, it's been 50! ■

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Beyond the Bar: Deep Diving with Matt and Becky

By Ana T. López Vives

Rebecca at Hilma Hooker



I wish I had met with Matthew Kopecki and Rebecca Smith for a drink at a quiet bar somewhere, but instead we met at their Wyomissing office on a rainy Monday afternoon. Matt is wearing what I call the “Dockers classic”: khaki colored pants and a blue polo shirt. It’s Columbus Day, not a national holiday but, since the courthouse is closed today, there is no reason for him to put on a suit. Becky wears an oversized white cardigan. It’s warm outside and humid because it’s been raining since the night before. Matt mentions that she is always cold. I can tell they are both sharp and quick witted. As the conversation flows, I quickly learn these two are easy to talk to and a joy to be around.

I’ve talked to Matt before about beekeeping and while most of our interactions have been over the phone and email, I discover the image I created of him in my mind isn’t that far off reality. He is of slight build, with a short-cropped haircut, and when he tells me he was in the Marines I can’t help but think, “Well, that explains it.” But this is my first interaction with Becky. What surprises me the most about her is that she is full of laughter. It’s hard for me to imagine her in a courtroom dealing with divorces and angry clients. She can’t seem to be able to sit still and, here in their office, she tugs at her cardigan while she sits crossed-legged across the table from me and laughs when I ask her to tell me how they met.

She was working for the Public Defender’s office while Matt was a law

clerk for Judge Yatron. They became quick friends, and now seeing them together it’s easy to see why. Matt takes his time explaining things; he takes you through the process and makes sure you understand what he wants you to see. Becky is all about facts, high points, and conclusions. As our conversation moves towards their scuba diving adventures, Matt takes his time explaining to me the complexities of their hobby while Becky interjects with interesting facts and tidbits. This is how they draw you in; together they paint a pretty picture.

While Matt tries to explain to me the ins and outs of scuba diving, Becky flips through pictures on her phone and, every so often, shows me one. “This is a spotted eel,” she says to me while casually adding, “That’s probably 60 or 70 feet deep.” I laugh nervously. The idea of being so deep underwater is giving me palpitations, but to Matt and Becky it is just another one of their adventures.

They have been to the Virgin Islands, the Bahamas, St. Martin, Antigua, Barbuda, St. John, Turks and Caicos, Bonaire... all over the Caribbean, and with a bucket list of diving in Bermuda, Honduras, Belize, the Great Barrier Reef, Greece, and maybe even Iceland.

Matt notices that I’m slightly uncomfortable with the idea of being so deep underwater and says to me that once you are down there you don’t really notice it. I’m still not buying it, but when the conversation switches to the practice of law I can see why they enjoy scuba

diving so much. "It's an escape," says Matt. "The practice of family law can be very stressful. You can have a client that is very unsatisfied even though you know you got them a good result under the circumstances."

"You need to find something else outside of practicing law to remain sane," Becky adds, "or else life passes you by." We talk about how, with modern technology, you no longer work a 9 to 5 schedule; you are on-call 24/7. "You have clients that email you at 9:00 pm, and in order to keep yourself and your practice competitive you have to answer those 9:00 pm emails because you know that others are," Becky says as one of their paralegals knocks on the door and asks her to review something quickly.

"It's a quality of life issue, and that's one of the hardest realities about the practice of law nowadays," Matt says. "A lot of people are focused on billable hours and making money, but you have to be able to make time for you."

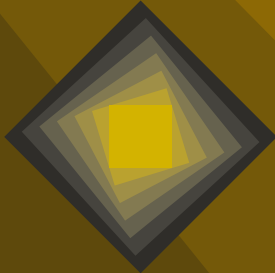
Becky obtained her scuba diving license last year. Matt obtained his while he was in the Marines but joined her during her training to refresh his scuba diving skills. Now, they plan their vacations around their shared hobby and, from how they describe it to me, scuba diving has an almost therapeutic quality to it.

"You have to balance practicing law with something that takes you away, and that's the one thing about scuba diving," says Matt. "When you are down there you are a visitor, and not only are you a visitor, you are the slowest thing down there. You are at everybody's mercy. It is a completely different world and it takes you out of your comfort zone which is good because it is challenging. It takes you away from the reality that you have, it makes you forget about deadlines and clients and judges, and you have to learn to focus on the moment."

As we talk more, I learn they have dived during the night with only a flashlight to explore the ocean. They have explored sunken ships on the ocean floor and they have videos to prove it. Becky's phone is full of Instagram-worthy pictures of their travels. They have now become what the youth nowadays would tag as "#relationshipgoals."

When I asked how long they've been married, without missing a beat, Matt looks at Becky and says he defers this question to her. "Five years in July," she says, and there's

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that laugh again. Matt asks when exactly, and she reminds him it was July 6. He shrugs and says he still believes it to be in October. I find myself confused and amused by this little exchange, and I asked when exactly was the wedding: July or October? "July 6, 2012," says Becky, laughing.

Matt, in what I've come to realize is his way, is quick to offer me a logical explanation. He confesses he is horrible at remembering anniversaries, but he recalls they started dating around Halloween and unilaterally decided to pick October 31 to

be their all-encompassing anniversary date. One can look at this method of thinking two ways: it is either lazy or genius. I personally believe it to be the latter.

And that is what summarizes them: they go with what works. It's practical and fun and allows them to concentrate on what really matters: living their lives to the fullest. ■

Ana T. López Vives is the Community Service Manager for the Berks County Bar Association.

From My Perspective

Do you see what I see?

A REVIEW OF RETROSPECTIVE JOHN ELDER, GOGGLEWORKS CENTER FOR THE ARTS

By John J. Duffy, III, Esquire

I realize that what I am about to say might appear to be counterintuitive, particularly because I am not yet past the first sentence of this article, but please humor me with what might be an exercise known to you. Close your eyes for one minute. (Some might find the closing of one's eyes to be salutary regarding all of my writing). Are you back? Good. Now be honest, if only with yourself. If I had been with you while your eyes were closed, would you have been able to describe for me with any particularity what is in front of, beside, and behind you? Would you have been able to tell me what the most prominent color is in the area in which you are reading this piece? Would you have been able to relate any sound(s) that you heard, and anything that your nose detected? If your replies to most of these questions would have been in the negative, I would hope that you are not a detective.

Please continue to humor me. With your eyes open, and with all of your senses fully engaged, how effectively, and in how much detail, can you respond to those questions that I posed? What do you see? Is there anything that you observe, hear, or smell, upon increased focus that you had not previously noticed? Go to a place that is quite familiar to you, should you not already be in such a location, and perform this exercise. Have you ever performed such an exercise? If you had difficulty answering those questions, or if you have

never performed such an exercise, I would suggest that you are not an artist.

I fear that we all routinely go through much of every day neither perceiving our environments. Should this be true, a necessary and sad corollary would also be true: we do not appreciate all that our surroundings have to offer, whatever their characteristics might be. These statements are not applicable to the photographer, and attorney, John Elder.

Riveting. Provocative. Poignant. Intense. Disconcerting. These are some of the primary adjectives that I would use to describe the 80 photographs by John Elder that I recently viewed, and that were exhibited from September 2 to October 15, 2017, in Retrospective John Elder at GoggleWorks in Cohen Gallery East. All of the photographs, which were identified as Untitled No. 1, 2, 3, and so on, were in black and white, and according to information available at the exhibition and online at the GoggleWorks website, were silver gelatin prints on fiber-based glossy paper.

Also available was John Elder's Statement on Photography. In that statement, Mr. Elder, who advised this writer that he is a solo practitioner who specializes in criminal-defense law, and who is certified to defend capital-homicide cases, sets forth his definition of his photographic work. In summary, he breaks that work down into four categories: Street Photography; abstracts taken on the street and not concerned

with the human condition; medium format photography, which is inanimate and somewhat abstract in nature; and Portraiture, which is taken both in and out of the studio.

The large and high-ceilinged Cohen Gallery East provided an excellent viewing space for these photographs, and the arrangement of the prints in that space afforded the viewer the opportunity and ability to view those prints, individually and comparatively, in favorable lighting and in a conducive ambience. In the space remaining in this article, I hope to afford the reader not only a review of this exhibition and my insights into it, but also a suggestion. As we proceed, please bear in mind that I am not a photographer. There are many activities that I do not do, and photography is one of them. Should you ever see me at a ballgame or a gathering of some sort, and should you want a picture taken of you and those with you, you should not ask me to take it. Please allow me to apologize in advance.

The photographs exhibited portray a stark and searing realism. They evoke reactions that range from serious contemplation, reflection, and introspection, to dark discomfort and perceptual disruption. Some of those street abstracts that depict concrete, industrial structures, as well as Elder's more abstract prints, might be included in the latter category, but a few photographs that depict, at least in part,

a human presence would also be included in that group, such as Untitled No. 19, which rather eerily shows a figure in a net or meshing through which the silhouette of a seated figure can be seen, and Untitled No. 75, which shows a shadowy image of a person on a tilted chair that is seen through branches and twigs. While I found such photographs to have been somewhat discomfiting, I also found them to have been strangely intriguing.

Elder's portraiture works, and the balance of his street photography, fall within the former category that I set forth in the preceding paragraph. The portraits' subjects, who appear to have been posed, are all interesting figures. Untitled No.

22 depicts Assistant Public Defender Richard Joyce, who is wearing a jacket. He is standing near a reflective surface, and has a pensive look. The split-figured nature of the photograph complements what is, perhaps, the torn nature of the subject's thoughts. In Untitled No. 25, Elder presents a woman in profile who appears to be in her middle years. Her left hand is raised to the lower left side of her face, and she appears to have the glimmer of a smile. This portrait is one of the two photographs that I can recall that depict a smiling person. The other photograph, discussed below, is depicted in a different, and disturbing manner.

I found Elder's Street Photography to have been of particular interest. I would like to discuss briefly several photographs in this regard before concluding this article with additional observations and a suggestion for the reader. Untitled No. 1 frames the shadows of a man and a woman against a brick wall as they are walking. This pair appears to be a couple, and the photograph, perhaps because of all of the shadows, conveys a sad, yet touching scene. In Untitled No. 8, two fascinating juxtapositions are presented.

Two African-American men are separated by a storefront. The man to the viewer's left is well dressed in jacket and tie, and appears to be smiling at the camera from inside the store. The man on the viewer's right is much more casually clad, and sitting hunched over on some object. The sociological and societal elements of this scene are poignant.

A somewhat similar scene is presented in Untitled No. 59, wherein an older Black man, who appears from his clothing to be homeless, is standing in front of the window of a jewelry store, while to his right, on the other side of a column, stands a White police officer. Neither appear, to be aware of the other. Again,



the assemblage of people and objects in the captured scene commands attention. Untitled No. 60 is another riveting example of Elder's eye for sociological visual dichotomy. Leaning against a building is a young man who is wearing a cap with the brim toward the back. He is holding a poster on which appears

the image of a fetus with its thumb to its mouth. Against the building, on the pavement, and below the image just described, is a sign in bold capital letters: **ABORTION IS MURDER!** The young man is smiling as he looks down upon a toddler who is standing on the sidewalk and looking up at him. The scene depicted in this photograph is simultaneously searing, ironic, dichotomous, and arresting. It is intriguing to the eye, and challenging to the intellect. In my estimation, it is one of the best photographs that I saw in this exhibit, and it is illustrative of the genius of John Elder.

Recently, I asked John Elder how, if at all, his photography informed his practice of law. He replied that photography has had a huge impact on his law practice. He wrote: "Photography and printing photographs takes me totally away from the pressures of criminal law. I am totally focused (pun intended) on solely shooting or printing. What I do in photography requires total concentration and awareness of my environment." He goes on to state that this is especially true regarding street photography where he is trying to capture a fleeting moment in time. "My street photographs tell a story (a nod to Rod Stewart)." Elder's keen eye, and his ability to tell a story, are apparent to anyone who sees his photography. His genius lies not only in his technical skill in taking a photograph, of whatever category, but also in his ability to elevate that photograph into an artistic form that is both visually and conceptually elegant.

Before concluding, I would beg the reader's indulgence so that I might offer a suggestion. In this regard, I would return to the opening of this article wherein I spoke of our inattention to our surroundings. What do we notice in any particular place or activity? How much do we miss every day in this regard? How might improvement in this area be achieved? I would suggest

Continued on page 18

Do You See What I See?

Continued from page 17



that one method of seeking greater perception and appreciation of one's environment might be to engage in perhaps a form of an exercise that the Jesuits employ, known as Composition of Place.

This exercise does not need to be religiously grounded, despite its use in spiritual contemplation. In fact, this exercise could be of great assistance, I would submit, regarding the practice of law. How might this work? Allow me to use one of John Elder's photographs, Untitled No. 35, in my attempt to convey this concept as I understand it. This photograph, one of my favorites in this collection, depicts a man who is draped over a church pew. His head is resting on his right arm, and his face is not visible to the viewer. From the clothing that is visible, it would appear that he is not a man of means. In the background, the viewer can see part of the wall of the church, as well as a statue and other items, including what might be a votive stand.

As you view the photograph, put yourself into it, and contemplate the scene using all of your senses. Perhaps you might sit in the pew behind the man. What do you see? What do you hear? What do you smell? Can you feel the surface of the wooden pew upon which you are sitting? Do you have the impression that

the man needs help? Do you have the impression that the man wants help? If you were to say anything to the man, what would you say? What are you thinking? What are you feeling?

Should you be a lawyer, you might employ a similar exercise as you prepare for cross-examination of a witness at trial, or for a closing argument, as you put yourself into the scene as you might envisage it. John Elder's Street Photography is particularly conducive to, and deserving of, this type of contemplation. I urge you to try it. ■

Mr. Duffy, a Philadelphia lawyer, writes on cultural topics for *The Barrister*, at the request of the BCBA Executive Director.



RECEPTION HONORING JOHN ELDER'S WORK

The Berks County Bar Association was pleased to host a reception at the GoggleWorks in honor of the showing of Attorney John Elder's photography art. ■



BCBA Director Dan Nevins, Judge Bucci and Paul Missan



President Elect Joan London, YLS President Mike Wieder and Secretary Lisa Siciliano



Mr. and Mrs. Al Crump with Richard Joyce (Center) being photobombed by a portrait of himself



Judge Lash, Mike Wolfe and John Reigle



Judge Fudeman and Past President Fred Hatt with John Elder (R)

As Seen In Sweden

By Stephanie R. Hager, Esquire



Stephanie and Lotta

“So, what do you know about Sweden?” It seemed like an odd question for Lotta to ask. When this question was repeated by others several times over the course of my nine-day trip, it appeared as if these Swedes didn’t expect Americans to know much about the country in advance of a first-time visit. I had to know plenty about Sweden. I’m a dedicated world traveler.¹ I’ve worked, lived and attended school among Scandinavian people. I furnished my first office almost exclusively with IKEA. I liked lingonberry jam and Swedish meatballs. Maybe I used to buy a lot of food from IKEA, too. I knew enough ABBA tracks to pick my top five.

However, truth be told, I wasn’t sure how much more I actually knew aside from the core reason for my visit: in the northernmost reaches of the country, the sun would not sink below the horizon between mid-May and mid-July. The lure of experiencing the Midnight Sun combined with the opportunity to reconnect with a few far-flung friends was enough push I needed to put in for some time off and embark for Sweden at the end of June. I explored Malmö, Gothenburg, Kiruna and Stockholm, and to the benefit of my small talk repertoire, I learned a few things I didn’t know about Sweden. Some of those were things I wish I’d known before making the trip. For those reasons, I’ve compiled a few observations to inform your planning of any forthcoming Swedish sojourns.

1. Can’t make it a week without practicing law? Feel free to represent someone in court.

After a brief stop in Dublin to attend a Radiohead concert, I set off to visit Lotta, an old friend and Malmö native. Lotta and I spent a summer working together as legal interns at a chamber of barristers in Melbourne, Australia, and this was our first reunion in the nine years since. She practices in commercial arbitration now in Malmö, an industrial seaport town at the southwestern tip of Sweden located across the Öresund Bridge from Copenhagen. After briefly catching up on our significant milestones from the last decade, we did what I expect any two attorneys worth their salt would do: we talked shop. To the dismay of her non-attorney husband, we talked so much shop that it’s possible the majority of our time together was spent comparing the rules of our respective jurisdictions.

Notably, there are no legal requirements for education or training in order to call one’s self a “lawyer” (in Swedish, a “jurist”)

and there are no restrictions on any adult’s ability to represent clients in court. There are no licensing

requirements or ethical rules for these “lawyers.” If, for example, a person wanted to contest a traffic ticket, she could bring a neighbor to court to speak on her behalf even if that neighbor has never before set foot inside a courtroom. Lotta is not a lawyer; rather, her title is “advokat,” which means she has completed a full advanced level legal education, has taken a bar examination and has been accepted as a member of the Swedish Bar Association. She had initially considered becoming a judge, explaining that instead of being elected or appointed by an executive, judges obtain their positions by applying to enter training, clerking for several years, and after passing an exam are simply assigned to a district court. There are no term limits, and because it is notoriously difficult to be dismissed from employment, some judges are essentially holding down lifetime appointments. She mentioned one instance in which a sitting judge was charged with a crime involving underage persons. However, the only impact on his professional life was that he’s restricted from hearing future cases involving children while he remains on the bench. We uncovered a fair amount of differences between our systems, including caps on legal fees, the fact that homeowner’s insurance typically covers an insured’s legal fees in many types of civil and criminal cases, and the standard rule that the loser in litigation by law has to reimburse the winner for all costs and attorney’s fees.

2. Avoid visiting during public holidays.

After Lotta graciously put me on the train to Gothenburg (although most adults can speak some level of English, most of the signage is strictly Swedish), the next leg of my journey was impacted significantly by the Midsummer holiday. As I would find out, there is a mass exodus from the cities and towns to the countryside as people dress in garlands of flowers and participate in a festival celebrating the longest days of the year. In something akin to a nationwide love-in, they celebrate life, fertility and nature while in most cases drinking heavily and dancing around the maypole – a less-than-subtle symbol of fertility – and virtually every public establishment shuts down. When I arrived in Gothenburg on Midsummer Eve, there wasn’t much to do aside from stroll past empty bars and restaurants and locked museums.

¹ Admittedly not nearly half as dedicated as I am in my role as an associate attorney with Stevens & Lee, P.C. of Reading.

In the center of the city there is a large public park, Slottsskogen, that has a free zoo, but even the animals were on holiday. I found a maypole there and met some revelers who told me that if I put seven flowers under my pillow on Midsummer Eve, I would dream about the person I would marry. Yes, I tried it, but no, I won't tell.

3. "Midnight Sun" does not guarantee "sunny."

From Gothenburg I made the trek to Kiruna, compressing what would have been a fifteen-hour train ride into 90 minutes by plane. As excited as I was to experience 36 straight hours of sunshine, I wasn't prepared for Kiruna. Kiruna is located in the Swedish Lapland and is the northernmost town in the country at 90 miles north of the Arctic Circle. At the center is Kiirunavaara, a massive iron ore mine that sustains the town economically but is also causing it to sink as old mineshafts collapse underneath the streets. The solution has been to relocate entire buildings to areas that aren't at risk of sinking, and I could see several homes "up on blocks" as it were, waiting to be moved. The experience was nothing short of eerie. It was June 24, but the temperature was in the low 50s, and the sky was overcast and spitting rain. The sun, from behind a shroud of clouds, never moved from the same spot in the sky. Thanks to Midsummer Day, the place was a veritable ghost town. I roamed the empty streets until I found the only open restaurant in the area, a pizzeria where I treated myself to a reindeer meat pie. I'd intended to stay up all night, but as the hours dragged on, there was nobody to talk to and the sun never budged, and I started to wonder if my airplane hadn't gone down somewhere in the wilderness and I was stuck in an eternal damp, chilly purgatory. Fortunately, the hallucinations stopped when I returned to the tiny airport for my flight to Stockholm.

4. Swedes don't talk to their neighbors, but they might talk to you.

The last three days of the trip returned me to cheerful as Stockholm was not only visually stunning, but there were also things to do and people to meet. The city itself is built on top of fourteen islands, and I stayed in the central Old Town ("Gamla Stan") near the Stockholm Palace. The Swedish flag hoisted above the palace meant that the king was present and doing business (the royal family's official residence is located outside the city), but Sweden has a constitutional monarchy, and the seat of the Riksdag, or parliament, was located adjacent to the palace. Due to the abundance of waterways, I took in the city views from an amphibious bus and made new friends over beers in Gamla Stan. Although I found people to be generally friendly and willing to talk, I learned this might not be the case between Swedes. It's somewhat of a national joke how people avoid talking to their neighbors and will peek out their doors to make sure nobody is around when leaving home. If someone is out there, they will wait until the coast is clear. The social anxiety can be so intense that one guy literally told me that, if he could own a gun like we can in America, and he ran into his neighbor waiting for their shared elevator, he "would shoot him and say 'that's my ride,'" though I like to think he was probably exaggerating.

What was the verdict? The diversity of my experiences in these four cities still amazes me and I can tell I'll be returning. After all, with so much daylight I never got to see the other thing I knew about Sweden: the Northern Lights. ■

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Mike Cammarano, Jr. and children



Mike Wieder and Casey Moerschell



Mike Setley and Judge Barrett



John Forry and Andy Howe

GENEROSITY

By John J. Duffy, III, Esquire

The window's panes will soon frame bare tree limbs
 as the lush, hued crush submits to a cycle.
 But sensory bliss bows not to Nature's rhyme,
 for what results boasts of its own wonder.
 Yet should bark and branch be thanked for this stir?
 Nay, Beauty-Joy is a gift transcendent.

But what of man whose gifts know not this scheme?
 Does he know his worth, and thereby freely give?
 Or does he doubt his merit for want of leaves?
 Does he not give when in want and in bloom?

TECHNOLOGY FRANKLY SPEAKING

Pennsylvania's New Public Access Policy

By Jeffrey A. Franklin, Esquire

The Berks County Bar Association (BCBA) held an informative, free Continuing Legal Education (CLE) seminar entitled *“Be Prepared: The New Public Access Policy Governing Filings”* as part of its October 24, 2017 recognition of those individuals who serve on the Berks Pro Bono Team by either volunteering at MidPenn Legal Services, Family Detention Center, Berks Encore, Safe Berks, Mortgage Foreclosure Diversion Project, or paying an “opt-out” fee.

The Pennsylvania Supreme Court has adopted a new public access policy (<http://www.pacourts.us/assets/opinions/Supreme/out/477jad-attach1.pdf?cb=1>) that, for the first time, establishes uniform standards for all Pennsylvania appellate and trial courts in responding to requests from the public for case records. The policy includes how requests for access are to be handled, establishes a limit on copying fees and delineates what information will be safeguarded.

The policy was initially published in draft form for public comment in 2015, and responses were considered and changes were made. The new policy goes into effect on **January 6, 2018**, although courts, attorneys and parties are preparing for the transition now.

“This new policy simplifies and unifies the process by which the public may access case records in trial and appellate courts statewide, but it does so while safeguarding the privacy and safety of citizens,” said Chief Justice of Pennsylvania Thomas G. Saylor in an announcement earlier this year. “It reflects the judiciary’s long commitment to making court records open and accessible to the public.

“The policy is built upon the principle that court records are open for inspection by the public while maintaining appropriate boundaries for the protection of individuals who come into the court system. In the internet age, courts are mindful of the

damage that can be caused to citizens by dissemination of highly sensitive, private information that may be found in a court file.”

The policy provides four different ways of safeguarding sensitive information:

1. CERTAIN TYPES OF INFORMATION cannot be included in court filings, but instead must be identified to the court on a separate form, called a Confidential Information Form (CIF), and attached to the filing.

- As an alternative to filing that CIF, a court may require a party to file two versions of every document with the court – both a redacted (without sensitive information) and unredacted version (which includes sensitive information).
- Only the redacted version will be available to the public.
- Social Security numbers are an example of information which falls under this section of the policy.

2. CERTAIN DOCUMENTS must be filed with a Confidential Document Form (CDF).

- Any document filed with this form will not be accessible to the public; however, the CDF or a copy of it will be accessible.
- Financial documents are examples of documents falling under this section of the policy.

3. CERTAIN CASES are not accessible to the public because there is no method to ensure that all of the sensitive information contained in the case file can be redacted before permitting public access.

- This policy adds two types of cases to those already protected under existing legal authority: cases pertaining to birth records and cases filed in incapacity proceedings. However, for these cases, the docket, court orders, and opinions and final decrees will remain available for public inspection.

4. CERTAIN INFORMATION is only accessible at the courthouse and not online.

- Family court records, except for dockets, court orders and opinions, are an example of information which falls under this section of the policy.

Parties and their attorneys will be responsible for safeguarding information in the documents they file with the courts. Courts may impose appropriate sanctions upon a party or attorney for failing to comply with the new policy.

The policy is the result of a multi-year review by a group led by co-chairs Commonwealth Court Judge Renée Cohn Jubelirer and Montgomery County Court of Common Pleas Judge Lois E. Murphy, who were the original visionaries for the project. The work group included judges, court administrators, appellate court prothonotaries, county filing office personnel, representatives from the Pennsylvania Bar Association, the Supreme Court's rules committees and staff of the Administrative Office of Pennsylvania Courts.

The most current public access policy for the state's magisterial district courts was adopted in 2010. Electronic case records are governed by a separate policy which was effective in January 2007 and updated in 2013.

Each court is required to have a copy of the policy available for public inspection.

Throughout 2017, the Administrative Office of Pennsylvania Courts (AOPC) will work with judges, court staff, lawyers' organizations and others with business before the courts to educate them about the new requirements.

The Court's order, policy and explanatory report, and a chart of entitled Limits on Public Access to the Unified Judicial System (UJS) of Case Records of the Appellate and Trial Courts (listing restrictions imposed by existing legal authority) are available on the UJS web site at <http://www.pacourts.us/public-record-policies>.

- ORDER**
- PUBLIC ACCESS POLICY**
- LIMITS ON PUBLIC ACCESS**
- EXPLANATORY REPORT**

As is often the case, implementation may vary from county to county. It is incumbent upon practitioners and parties alike to familiarize themselves with the policy and the specific procedures of each county in which they practice and appear.

HOW TO REDACT

Redacting a document is easy; take out the big black marker, cover up what you want to redact, scan or copy the document and you are done, right? Not so fast; modern copiers and scanners are such high quality they can often see through that black marker, revealing the "redacted" material. So just use the more modern

Continued on page 26

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Pennsylvania's New Public Access Policy

Continued from page 25

electronic equivalent of the black marker by setting a black box around the text to be redacted or be tricky and set the text to be redacted to white so it is invisible, right? Unfortunately, these methods do not redact the text which can often be recovered by optical character recognition (OCR) through searching the text, by cutting and pasting the black box, or by changing the text color of the electronic document. So, no, these techniques do not redact the text. So how do you redact a document?

Many electronic discovery software systems offer effective redaction tools, but the most popular and an effective redaction tool is Adobe Acrobat Pro. The free Adobe Reader version does not perform redaction. There are less expensive alternative PDF tools which offer redaction which should be effective:

- PDFfiller has a free Google Chrome add-in and an on-line version to redact from your browser (<https://redact-pdf.pdfFiller.com>).
- PDFelement is about \$100 per computer and includes redaction (<https://pdf.wondershare.com>).
- Nitro Pro is a full featured PDF software for about \$160 per computer (<https://store.gonitro.com>).
- Nuance Power PDF Advanced has been my favorite Adobe Acrobat Pro alternative and is about \$150 per

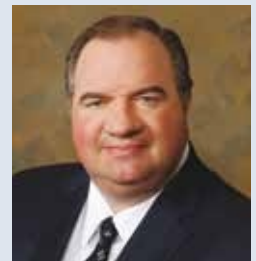
computer but look for discounts to about \$100 (<http://www.nuancescan.com>).

• I have tried some of these tools in the past (most have free trials), but I have always come back to paying for Adobe Acrobat Pro as the tool I trust for my use. Acrobat Pro DC is about \$15 per month or Adobe Acrobat Pro 2017 download or disc is about \$450 to purchase. Acrobat Pro version XI stopped getting support including security updates on **October 15, 2017**, so it is time to upgrade if you are using Acrobat version XI or below.

Using Adobe Acrobat Pro to redact a document is quite simple and effective, if expensive. A step by step guide is available on the web for free here: <https://lawyerist.com/how-to-redact-a-pdf/>.

If you have a free or low-cost Acrobat Pro alternative to share, please contact me at JFranklin@BrightLineTechSolutions.com. ■

BCBA Vice President Jeffrey A. Franklin, Esquire, is chair of the BCBA's Technology Committee, practices law with Prince Law Offices, P.C. and is a principal of Brightline Tech Solutions, LLC.



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Pro Bono Celebration

On October 24, as part of national Pro Bono Celebration Week, the Berks County Bar Association recognized its Pro Bono Team members with a luncheon, an afternoon of free seminars and a concluding reception. The celebration featured the awarding of the Pennsylvania Bar Association's 2017 Pro Bono Award to members of the Pro Bono Bankruptcy Panel and a keynote speech by United States Third Circuit Court of Appeals Judge L. Felipe Restrepo. We salute the members of the Pro Bono Team for helping those in need. ■



President Judge Yatron applauded members of the Pro Bono Team for helping to provide access to justice



PBA PRO BONO AWARDEES (L-R): Dan Rabenold, Steve Otto, Scott Painter, PBA President Elect Charles Eppolito, who presented the awards, Brenna Mendelsohn, Shawn Lau and Dean of the group David Gellert.



Pete Schuchman and Jim Smith



Keynote Speaker Third Circuit Court of Appeals Judge L. Felipe Restrepo



Andy Fick and Mike McGuckin



Abe Cepeda, Valeen Hykes and Chad Rick



MDJ Victor Frederick, Toby Mendelsohn, Brenna Mendelsohn, Paul Missan, Gary Swarvelly and Mike Boland



Tom Beaver and Lou Shucker



Panel For Seminar On Tricky Issues In Child Custody Litigation (L-R): Jill Scheidt, Judge Dan Clifford of the Montgomery Court of Common Pleas, and Greg Henry



Chris Hoffmann, Matthew Martin, Mariam Matias, Frank D'Amore, Rosalie Horne, Ylaysia Lora Rivera, Amy Good and Steve Otto



On October 18 Dickinson School of Law Dean Gary Gildin (L) and Widener Commonwealth Law School Dean Christian Johnson (Center) attended a Roundtable, moderated by Executive Director Donald F. Smith, Jr. (R), on the current state of legal education and its future. The well-attended session was followed by a reception.



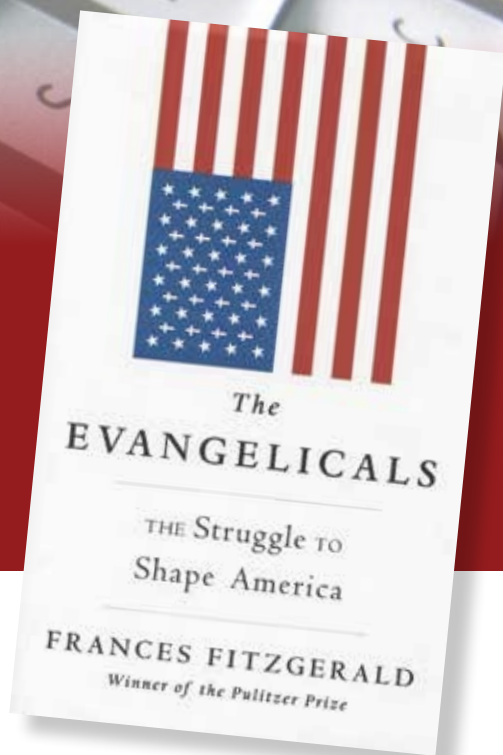
Summer Swanson, Judy Kline and Barbara Dietrich

Book Review

The Evangelicals: The Struggle to Shape America

By FRANCES FITZGERALD

Reviewed by Andrew F. Fick, Esquire



I was on my way to the courthouse, when I decided to stop by the Bar Association building for a few minutes. In a passing conversation, Executive Director Don Smith asked if I would be willing to write a book review for an upcoming edition of *The Berks Barrister*. Without a moment's thought (which some might say was my first mistake), I responded "Sure." When I asked what book he had in mind, Don said "*The Evangelicals: The Struggle to Shape America*," by Pulitzer Prize winning author, Frances FitzGerald. I was not familiar with the book, but was more than willing to assume the mantle.

It was not long before a copy of the 740-page book was delivered to my office. To be fair, only 636 pages were text with the remainder comprised of a glossary and index. As I thumbed through it, I experienced flashbacks to my days as an undergraduate history major, 50-plus page term papers and, of course, the associated deadlines. After that brief moment of reflection, and a mild rush of anxiety, I sensed a small voice somewhere inside me saying, "You can do this."

The scope of FitzGerald's work is quite daunting. In the introduction, she attempts to grab the reader's attention by reminding us that, in 1976, when Jimmy Carter, a liberal Southern Baptist, ran for President, pollster George Gallup estimated that 50 million Americans were "born-again" Christians. She notes that, four years later, the Christian right emerged in force, with Jerry Falwell, a fundamentalist pastor, Pat Robertson, a televangelist, and conservative Southern Baptists leading the charge against the gay rights movement, abortion and the banning of school prayer. FitzGerald claims that the sudden appearance of the Christian right shocked most political observers. Journalists wanted to know who these people were and from where the crusade against "secular humanism" came.

Having grabbed our attention, FitzGerald offers some important background. She points out that many people mistakenly equate evangelicals with fundamentalists or the Christian right, when only a minority of evangelicals belong to

either group, and that some consider evangelicals only a marginal group, when, in fact, they constitute nearly 25% of the population. Most significantly, FitzGerald explains that the term "evangelical" is not a political term, but a religious one, derived from the Greek "evangel," meaning the "good news," or "the Gospel." She notes that "evangelical" was the common description for the revivals that swept the English-speaking world in the late eighteenth and early nineteenth centuries.

According to FitzGerald, the book is not an attempt to describe the entirety of evangelical life, but rather is intended as a history of the white evangelical movements leading to an understanding of the Christian right and its evangelical opponents that have emerged in recent years. She indicates that she purposefully omits the history of African American churches because, even though some African American denominations identify as evangelical, their history and religious traditions are not the same as those of white evangelicals.

At that point, with a firm foundation properly laid, FitzGerald begins a detailed analysis of the history of the evangelical movement. She submits that its beginnings were in the two Great Awakenings in America — religious awakenings, or revivals, the first of which took place in the late eighteenth century and the second in the decades after the Revolution. FitzGerald asserts that the lay revivalists of the Second Great Awakening, working on the nation's frontiers, preached a populist religion focused on individual conversions with an anti-intellectual bent, while the more established preachers focused on social reform.

FitzGerald observes that for most of the nineteenth century, evangelicalism was the dominant religious force in the country, but there were some issues that divided the Protestant churches.

She points out that northern and southern evangelicals were divided over the issue of slavery, and, after the Civil War, modernist thought divided northern evangelicals between liberals, who embraced modernist thought, and conservatives, who rejected it. FitzGerald explains that the modernists accepted the new science and created a social gospel, while the conservatives believed that the society was falling apart and the conversion of individuals was the answer. Eventually, conservatism was also clearly associated with the belief that the Bible was inerrant and the concept that society was in an inevitable decline heading toward the battle of Armageddon and the return of Christ. This conservative view became known as fundamentalism.

FitzGerald states that a fundamentalist-modernist conflict erupted after World War I that affected all Protestant denominations; the fundamentalists lost and many left their denominations. She notes that, after World War II, Reverend Billy Graham, then considered a fundamentalist, began attracting enormous crowds at his revivals. He, later, referred to himself as an “evangelical.” Graham defined that term to mean a conservative Protestant who had been “born again.” FitzGerald indicates that fundamentalists were a subset of evangelicals, and most of them were separatists who had left their denominations.

According to FitzGerald, the balance of power in the evangelical world was changed by the explosive growth of Pentecostalism, the spread of Pentecostal beliefs to liberal Protestant denominations and the Catholic church and the integration of white southern evangelicals into the life of the nation for the first time since the Civil War. She asserts that when white southerners reemerged, the dominant religious force in the South was the Southern Baptist Convention, which had not been impacted by the modernism that had affected the North. As southerners moved out of the South to areas where industry was growing, the Southern Baptist Convention followed them.

FitzGerald, then, relates the significant cultural changes of the 1960s and early 1970s, such as the Supreme Court decisions banning prayer and Bible reading in the schools, the civil rights movement and *Roe v. Wade*. She states that only the fundamentalists objected to all of them, while other evangelicals took moderate stances on many of the issues. FitzGerald argues that the reaction to these cultural changes, which came later, was an upsurge of fundamentalism in the South and the appearance of new leaders. She states that it was at this point that Jerry Falwell and others first appeared on the national political stage with the call for conservative Christians to get involved in politics, and the Moral Majority and similar groups were formed. This populist movement became known as the Christian right.

FitzGerald indicates that Falwell shut down the Moral Majority in the late 1980s, but was followed by Pat Robertson, who had built a successful Christian television network. Robertson ran for the Republican nomination for President in 1988, forming the Christian Coalition. FitzGerald states that, during the early years of the Clinton administration, the Christian Coalition, and other Christian right organizations,

Continued on page 32



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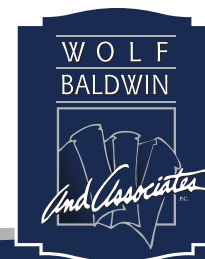
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Book Review *Continued from page 31*

experienced significant growth in membership and financing. She notes that the Republican party captured 75% of the evangelical vote in the mid-term elections which put the Republicans in control of the House for the first time in 40 years, but the influence of the Christian right appeared to be faltering at the end of the Clinton presidency.

FitzGerald suggests that the Christian right movement was reenergized in 2000 with the election of President George W. Bush. She points out that he had been born again, spoke their language, and knew how much Republicans depended on the Christian right with its influence on evangelical voters. FitzGerald states that his first administration saw a growing alliance between the two, as the President gave them access to the White House and supported some of their initiatives. The primary Christian right leaders, at that time, were James Dobson, the founder of Focus on the Family, and Richard Land, the head of the policy arm of the Southern Baptist Convention.

According to FitzGerald, during the President's second term, the Christian right's alliance with the unpopular Bush administration created a backlash, even among evangelicals, who feared that they had become identified as part of the Republican Party. She states that many leading evangelicals began distancing themselves from the Christian right as a result. These "new evangelicals," took up social justice issues, such as poverty and climate change.

FitzGerald argues that the decline of the Christian right had begun by that point, explaining that Jerry Falwell and many other Christian right leaders had died, or retired, and no one took their place. She further asserts that baby boomers and subsequent generations had absorbed the social changes that had taken place since the 1960s, were not concerned about the same issues as the older generations and were more tolerant of the views of others and saw the U.S. as a pluralistic society.

FitzGerald points out that, after Barrack Obama won the 2008 election, some of the "new evangelicals" actually came out in support the president's health care bill, which was opposed by

the Catholic bishops and the remaining Christian right leaders, who considered the mandates on contraception and abortion a violation of their religious freedom. The passage of Obamacare coincided with the economic crisis on Wall Street. According to FitzGerald, the reaction to the economic crisis was the formation of the Tea Party, and the Christian right activists joined the Tea Party, which was the larger and more powerful group at that point.

By the time of the 2016 election, the evangelical world had become a complex place; one where the Christian right no longer dominated the landscape. Donald Trump winning the Republican nomination with many evangelical votes left evangelical leaders confused. As a result, FitzGerald argues that the Christian right is splintering with its numbers shrinking, and America will eventually look more like secular Europe.

I enjoyed the book, and it was definitely worth reading. It is well-written, after all, FitzGerald is a Pulitzer Prize winning author, and the source material is all thoroughly documented. It would be a great read for a political junkie, or religious junkie (if there is such a thing). I must admit that the read was a bit slower for me through the first few chapters, which focused on the religious roots of evangelical movement, and certainly my interest, and speed, picked up as we approached the present. In fact, to that extent, it almost felt as if I was reading two, separate books—a religious history of the movement and an analysis of the modern religious, cultural and political impact of the movement. I would not change anything about her approach, since I believe that the religious history of the evangelical movement she provided was critical to a complete understanding of the topic. ■

Andrew F. Fick, Esquire, is with the Reading law firm of Liever, Hyman & Potter, P.C., where his practice focuses on personal injury and workers' compensation litigation. He is Chair of the BCBA's Citizenship Committee, and he also serves on the Board of Directors for MidPenn Legal Services.

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Spotlight on New Members

By Donald F. Smith, Jr., Esquire



Frank D'Amore is a staff attorney at MidPenn Legal Services. A graduate of the University Park campus of the Dickinson School of Law and Monmouth University, Frank had worked summers during law school, first, with the Pennsylvania Innocence Project, and then at North Penn Legal Services during the second summer. He notes that before he “became serious about my schooling I worked on industrial truck tires.” As for hobbies, “My kitchen is my workshop. I spend a considerable amount of time reading about, practicing and messing up cooking techniques. My first love is baking sourdough breads and pizzas, but I also enjoy charcuterie and cooking the classic Italian-American fare.” In addition, he enjoys watching and participating in sports. Frank is married to Reem and they are expecting their first child in November.



A new associate at Stevens & Lee, P.C. is **Adam D. Reid** in its Wealth Planning, Trust and Estates Department. He graduated from Villanova University and the Temple University Beasley School of Law. His work experience includes being a law clerk in the Business & Finance Department of Kleinbard, LLC and as an associate with a Philadelphia-based trusts and estates firm. In his free time, Adam enjoys cooking, photography and golf.



Molly Sanders is the new Guardian ad Litem for Berks County. Her undergraduate degree is from the University of Pennsylvania, and her law degree was earned at the David A. Clarke School of Law of the University of the District of Columbia. She had previously served as a counselor at Safe Berks and had been with the Tinovsky Law Firm, P.C. in Trevese. Molly's outside interests are swimming, reading, playing golf, going to the movies and playing with her dogs, Bogart and Bacall, and her cat, Griffin. ■

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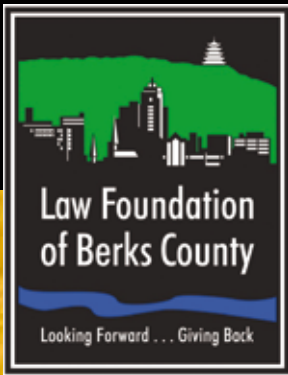
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LAW FOUNDATION OF BERKS COUNTY 2017 ANNUAL GIVING CAMPAIGN

The Law Foundation of Berks County's 2017 Annual Giving Campaign is continuing. As of October 26, 2017, those listed below have graciously given to the Foundation. If you have not already donated, contributions may be sent to

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Mike & Mary Jean Noon
Law Office of Michael Restrepo
Daniel K. Snyder (*In memory of Alan S. Miller, Esquire*)
Honorable George C. Yatron

In Memoriam



Leon A. Miller

Leon Miller, 85, passed away on August 21, 2017. Mr. Miller graduated from Reading High School in 1950 where he was the senior class president and a varsity basketball player. Mr. Miller received his undergraduate degree from Lafayette College in 1954 where he also continued his basketball career. Mr. Miller received his law degree from the University of Pennsylvania Law School in 1957. Upon graduation from law school, Mr. Miller became an associate in the office of Attorney James W. Bertolet. When Bertolet became a Berks County Common Pleas Judge in 1964, Mr. Miller started the firm of Williamson, Miller and Murray with Richard T. Williamson and James H. Murray, which later became known as Miller and Murray. Miller retired from the practice of law in 1994. In support of his belief in a good education, Mr. Miller and his wife created a perpetual scholarship fund named the Leon A. and Marian I. Miller Family Scholarship Fund which provides financial aid to a Berks County student attending Lafayette College. Mr. Miller is survived by his wife, Marian, his two daughters, Karen L. Miller and Kristie Miller McMahan, his two sons, Kurt A. Miller and Kyle L. Miller, and his nine grandchildren. ■



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Annual Meeting

The Berks County Bar Association's Annual Meeting on October 26 featured the passing of the Presidential Gavel and Medallion to 2018 President Joan E. London, as well as the election of Eden R. Bucher as Vice President, Amy B. Good as Treasurer, Michael C. Wieder as Secretary, and Jennifer L. Grimes and Jeffrey D. Bukowski as Directors. ■



2017 President Althouse places the traditional Presidential Medallion around the neck of 2018 President London



Herb Karasin and Board Director Gabby Raful



2018 President Joan E. London receives the Presidential Gavel from 2017 President Kurt Althouse



David Beane, Past Presidents Dan and Dick Bausher, Judge Fudeman and ALJ George Yatron



50-year members Geoffrey M. Stoudt and Henry M. Koch, Jr.



Amy B. Good received the Presidential Award of Merit for her devoted work as Co-Chair of the Bankruptcy Section, particularly in planning and leading important discussions, and as Chair of the Mortgage Foreclosure Diversion Task Force



PASSING OF THE PRESIDENTIAL GAVEL (R-L): Judge Koestel (President in 2016), Jesse Pleet (2015), Tom Bell (2014), Gene Orlando (2013), Fred Hatt (2012), Jill Scheidt (2011), Judge Antanavage (2005), Fred Mogel (2003), John Speicher (2002), Don Smith (2000), Jim Snyder (1999), Dave Kozloff (1992) and Frank Mulligan (1990).



Amy Miller and Jacob Thielen



JUDICIOUS LINEUP (L-R): Judges Barrett, Sprecher, Lillis, Lieberman, Lash, Rowley, Antanavage, Koestel, Parisi, Schmebl, Fudeman, Keller, Bucci, George Yatron and President Judge Paul Yatron



2018 President London with PBA President Sharon López



Val West and Kim Lengert



Gabriela G. Raful received the Presidential Award of Merit for her leadership of the Minority Bar Section and for planning an important public seminar on immigration issues that attracted a number of public officials

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Parents at Risk for the Freshmen Fifteen

By Susan N. Denaro, Esquire



Cocktail at Barcelona



While the high school football and soccer seasons got into full swing this fall, we found ourselves participating in the competitive sport of weekend college-hopping with our son. What we didn't realize as he selected the schools to visit was that we would become accidental tourists in those college towns. Our visits often started with lengthy guided tours of the campuses with parents of other candidates. In between our mandatory appearances, we embarked on what I've come to call the Great Food Tour of 2017.

Our first and favorite trip was to New Haven, CT, where the culinary delights exceeded our expectations. Our food comas began in a cafeteria on campus. The café had several food stations, all with unexpected offerings, running the gamut from fried calamari and white clam pizza to Brussels sprout salad and cranberry chicken salad.

The days of gray mystery meat that was a mainstay in my college dorm seem to be a thing of the past. Back then, we ate hard-boiled eggs as it was the only way to guarantee they weren't made from a powder. I was one of the rare exceptions in my gang freshman year who actually lost weight because the food was so sad.

As good as the food was on campus, the food in the establishments within walking distance made for the most delightful and unexpected weekend get-away we've had in years. Thanks to Rick, Marcia and Kiki Binder giving us choice recommendations, we managed to eat our way through New Haven, CT. Dinner Friday night was at Zinc, 964 Chapel Street. Although it was billed as an American restaurant, it featured a three-course dinner option I've come to really enjoy when dining in Europe.

We started with a cream of poblano and corn chowder that was better than any I've ever made. It had all the right

spice notes that dazzled the palate long after the dish was cleared from the table. The soup was served with a plate of warm house-made focaccia bites and red pepper jelly that were a perfect accompaniment. It was so satisfying, I could have ended my meal right then and there and happily gone back the next night to order it again.

The second course was a veal Milanese with cooked kale, properly roasted potatoes and a light lemony sauce. I fell into a pattern of loading my fork with all the elements over and over again as all the flavors combined formed a perfect bite.

The real surprise of the meal was the dessert, a duo of a light lemony cheesecake topped with a fresh blueberry sauce and a slice of a frozen strawberry mousse that had a layer of mint mousse on top. The pale pink and mint green offering wasn't cloyingly rich or overly sweet. Instead, it was fresh and light and made it hard to leave a bite behind.

Saturday started with walking a few blocks from our hotel to Clare's Corner Copia, 1000 Chapel Street. It was a little reminiscent of our own Cloud Nine in Spring Ridge. You ordered at the counter and waited for the food to be brought to your table. There were tempting baked goods in the glass cases and then various, and I suspect ever-changing, warm offerings.

We started with a blueberry-laden scone and a glass of blueberry infused iced tea while we waited for our eggs. The scone was perfect; not too dry, not too sweet and not too heavy. Sharing it allowed us to still be hungry when our meals arrived. Mine was a simple dish of whole wheat toast topped with avocado

slices and slightly undercooked poached eggs.

John's breakfast was a Tex-Mex inspired wrap that featured a whole wheat tortilla over-stuffed with eggs, black beans, peppers, red onions and corn. It was so large it was almost impossible to eat with one's hands. Both featured just the right amount of protein to fuel our scheduled activities for the day.

Dinner our last night in New Haven was a feast at Barcelona, a tapas bar, at 155 Temple Street. We started with a signature gin and tonic that featured Miller's Gin, Fever Tree Tonic and muddled rosemary with orange slices. It was sublime. I suspect there was a little rosemary infused simple syrup in it as it had a sweetness that did not come from the tonic or the gin.

Shortly after we settled into our drinks, the stunning succession of tapas began arriving. As one dish was set in front of us, we ordered the next, just as we did in Spain. The best of the best was properly-sliced Iberico Jamon, which was our first course. It was rivaled by croquettes that were so good we ordered a second plate as our final dish. Our server recommended the tiny meatballs in a spicy red sauce. A couple of vegetable selections followed and we kept ordering until we felt like we'd had a well-balanced meal. The whole experience was so authentic to what we enjoyed in Barcelona, Spain, that I want to go back to New Haven.

What we learned from our accidental food tour of the beautiful college towns we toured is that wherever our son decides to go to college, if we visit him often, we'll have to be careful to avoid gaining the dreaded freshman fifteen. ■

Ms. Denaro is with the Wyoming law firm of Georgaidis||Setley.

M I S C E L L A N E O U S

Docket



Joanne M. Judge of Stevens & Lee recently received the Franciscan Award from Alvernia University for selflessly giving of her time, talents and resources to Alvernia for the betterment of others.

Joel A. Ready and **Lena Wakim** were married in Methuen, Massachusetts, on August 19. Joel is with the Cornerstone Law Firm.

At the September School Board meeting for the Fleetwood Area School District, the County Mock Trial Championship trophy was presented to members of the Fleetwood team, who won for the third year in row. Molly Sherman is the teacher-advisor, and the attorney advisors are **Joel A. Ready** (L) and **James M. Smith** (R). Jim is the principal of Smith Law Group.



William Christopher joined the VanFossen family on August 13. His mother is Assistant District Attorney **Pamela VanFossen**; his father is David and older sister is Sophia.



At the Dickinson School of Law's 5K Fun Run to benefit the Public Interest Law Fund on September 23, President Elect **Joan London** was the first female runner to cross the finish line. She is a partner at Kozloff Stoudt.



In September's Pine Creek Challenge, BCBA Treasurer-Elect **Amy B. Good** placed second among females, ninth overall, after running 104.3 miles in 23 hours, 19 minutes and 47 seconds. Amy is the manager for the Reading office of MidPenn Legal Services.

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