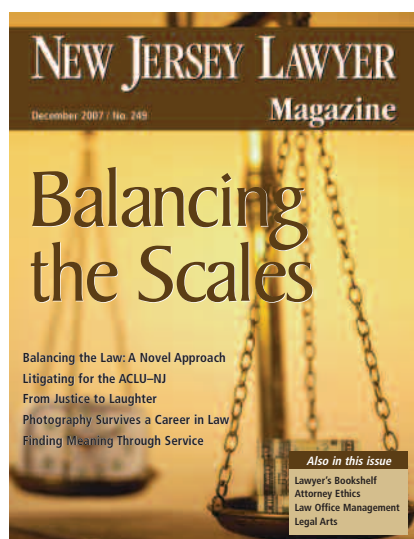


# NEW JERSEY LAWYER

## Magazine

December 2007 / No. 249

*In this Issue:*  
**Balancing the Scales**



### FEATURES

- Saturdays in Motion** 4  
by Arthur L. Raynes
- The Triangle of Life: A Speech to Newly Admitted Attorneys** 7  
by Hon. John W. Bissell
- Balancing the Law: A Novel Approach** 10  
by Sal DeStefano
- When Tragedy Strikes: How One Attorney Created Joy Where There Once Was Only Sorrow** 13
- In the Arena: Litigating for the ACLU-NJ** 16  
by Gary D. Nissenbaum
- Hitting the Wall and Hanging My Shingle** 20  
by Scott D. Grossman
- Free to Fudge the Facts** 23  
by Ken Isaacson
- From Justice to Laughter** 26  
by Shaun Eli Breidbart
- Three Careers and Counting** 31  
by Roger Lowenstein
- Capturing the Moment: Photography Survives a Career in Law** 33  
by Terence W. Camp
- The Good Lawyer: Finding Meaning Through Service** 37  
by Paula A. Franzese
- Me and My Wurlitzer** 40  
by Virginia Drick Messing
- Lawyers Assistance Program Lends a Helping Hand** 43  
by William J. Kane

### DEPARTMENTS

- President's Perspective 2
- Message From the Special Editors 3
- Legislative Corner 46
- Lawyer's Bookshelf 47
- Attorney Ethics 49
- Law Office Management 50
- Postal Report 52
- Legal Arts 54

# PRESIDENT'S PERSPECTIVE

LYNN FONTAINE NEWSOME

## A Resolution for the New Year

**W**ith the new year just around the corner, the timing could not be better for this issue of *New Jersey Lawyer Magazine*. Whether you actually commit them to paper or simply keep an informal list in the back of your mind, nearly all of us make resolutions come January 1. Among the plans to lose weight, establish an exercise routine, or quit whatever bad habit we have taken up over the years, most of us also vow to make time to pursue other interests beyond our legal practices, be it an old abandoned hobby, an unrealized dream, or just spending more time with the family. Of course, just like most of those other resolutions, the plan to make more time for ourselves usually fades from our thoughts by sometime in February, if not sooner.

This issue of the NJSBA's magazine was conceived as a



motivator for those of us who have lost that resolve in the past. Within these pages are the inspirational stories of nearly a dozen attorneys who have managed to keep their resolutions, and in doing so forged a more satisfying life for themselves.

While all of us cannot be authors, musicians, or philanthropists, keeping this issue within easy reach could provide the inspiration many of us need to make 2008 the year we finally follow through and make more time for ourselves. Keeping that resolution will no doubt make life more satisfying both personally and professionally. As Anna Quindlen wrote in *A Short Guide to a Happy Life*, "You cannot really be first-rate at your work if your work is all you are." ♣



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## MESSAGE FROM THE SPECIAL EDITORS

Our goal in soliciting articles for this issue of *New Jersey Lawyer Magazine* was to provide inspiration to those of us who are burned out, frazzled or just plain tired of the daily grind. With that end in mind, we are pleased to publish a selection of articles that illustrate how some of our brethren have found that motivation. The authors, and therefore the articles, fall into three main categories: 1) attorneys who are actually involved with charitable organizations; 2) attorneys who have developed a specialized interest within the law; and 3) attorneys with hobbies that utilize their professional training or allow them to have fun while still practicing law.

We hope you will find inspiration in the following articles, and we wish to thank the authors who contributed to this special issue for taking the time to share a personal part of themselves with us.

Among the selections, Arthur Raynes captivates us with his decision to start a recreation program for autistic children. We also learn how, when faced with a personal tragedy, Morton Bunis started a foundation to help children with special needs.

Judge John Bissell shares his advice to newly admitted attorneys and Paula Franzese confirms the personal satisfaction that lawyers receive from public service, while Gary Nissenbaum's article provides insight into how each of us can and must use our skills to uphold the principles of law we hold so dear.

Both Sal DeStefano and Ken Isaacson share their experiences writing novels; their personal stories are captivating to those of us who have not yet found the discipline to write our own bestseller. Roger Lowenstein discusses becoming a screen writer for "LA Law," while Terence Camp focuses on fulfilling his lifelong dream of becoming a photographer. As Virginia Messing's article details, she



MITCHELL COBERT



SUSAN STORCH

finds joy playing pipe organs her volunteer group restores. Shaun Eli Breidbart interviews several lawyers who, believe it or not, are actually funny, and Scott Grossman describes finding the courage to start a private practice.

William Kane has contributed an important article about the Lawyers Assistance Program, which helps lawyers with alcohol and drug dependency problems as well as those who are compulsive gamblers or who suffer from depression or other mental illnesses. Additionally, Valerie Brown introduces us to the nine principles of Dale Carnegie, which we can all learn from, in a new column titled "Legislative Corner."

As we prepare to usher in 2008, our message in this special issue of the magazine is that each and every attorney can and should do what is necessary to find meaning in what he or she does, and, if nothing else, have fun in doing so. Merry Christmas, Happy Hanukah, Happy Kwanza, and have a great New Year!

**Mitchell Cobert** is a solo practitioner in Morristown with an emphasis on securities law. He is immediate past president of the Morris County Bar Association and a member of the New Jersey Lawyer Magazine Editorial Board. **Susan Storch** is of counsel for strategic initiatives with Fragomen, Del Rey, Bernsen & Loewy, LLP, and a member of the New Jersey Lawyer Magazine Editorial Board.

# Saturdays in Motion

by Arthur L. Raynes





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For 15 years now I've had the great fun of running the Saturdays in Motion Program at the Somerset Hills YMCA. I created this recreational program for autistic children and their families. With the help of a couple of other fathers we were able to convince the Somerset Hills YMCA to host the program.

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**T**he program takes place several Saturdays a month from Nov. until April. We spend an hour in the Olympic-sized pool at the Y and an hour in the Y's gymnastics room. The program is manned mostly by high school volunteers, but when we're short (prom days, etc.) the folks from Wiley Malehorn Sirota & Raynes, my law firm, can be counted on to help.

In the pool, the volunteers swim and play with the autistic children and their siblings. Upstairs in the gymnastics room, the volunteers take positions at stations that are set up, play with the kids, and try to get them to play with one another.

I've been at Wiley Malehorn Sirota & Raynes for 25 years now. I handle mostly litigation. I am also a managing partner of the firm. On a fairly regular basis, I deal with some difficult adversaries, some difficult clients, some difficult employees and even some difficult judges. Fortunately, my partners have not been very difficult. But it's still a stressful way to make a living. Despite the stresses and frustrations of practicing law, I've had some substantial success, and generally I've found it to be a rewarding profession.

The rewards of practicing law, however, do not compare with the rewards of a Saturdays in Motion session. In those weeks when the frustrations and difficulties of practicing law weigh heavy, the Saturdays in Motion Program offers me guaranteed joy and satisfaction.

Spending time with these kids from week-to-week, month-to-month and year-to-year allows me to see progress. Progress with this population is most often measured in tiny steps, but it is real and very meaningful. Over the years, I have had at least a dozen volunteers tell me that they didn't realize what they were doing with a particular child was a big deal until that child's mom or dad told the volunteer it was the first time the child had "played with" someone who was not a member of the family. As the person running the show, I get to see both the progress being made and the wonderful effects on the volunteers.

Sam Hahn, who is now at Penn State, was an outstanding volunteer throughout his high school years. He also happens to be the son of David Hahn, a Parsippany attorney. Sam tells the story about being ready to quit the program after his first session, since he was only able to interact with one boy, who threw a ball back and forth with him for a short period of time. Sam said he felt frustrated that he couldn't "reach" more kids, until the one boy's father ran after him to thank him

and to tell him what a great thing it was that he was able to play with his son for even that short period of time. Sam stayed on, and became a leader among the volunteers.

Every once in a while, a child's progress is not so small. We've had a few giant leaps. The most memorable was at our holiday party several years ago, when a five- or six-year-old boy who had previously only uttered rare single words decided it was time for him to tell Santa Claus what he wanted for Christmas. I went over because I saw his mom crying. As I approached, I saw Santa Claus was crying too, as were several of the high school volunteers nearby. Through all of the crying, the formerly silent little boy kept talking and talking. None of us who were there that day will ever forget it. One of my clearest recollections was of my son Michael's friend Chris, a 6-foot 5-inch high school jock who had been volunteering for several years, sobbing like a baby, unashamed. The program did not cause him to talk; he had it in him, and the expression was just a matter of time. But the program and our volunteers did provide a setting in which he felt comfortable and safe enough to talk.

Even if the program did nothing for the children with autism, their siblings, or their parents, it would still be worth-

while for the effect that it has on our high school volunteers. Most volunteers start as freshmen or sophomores, and are confused, uncertain, uneasy and frazzled. Some don't stick it out for various reasons, including how slow the rewards come.

The transformation in the ones who do stick it out is amazing. They become focused, confident, competent volunteers. They take charge of situations, handle crises and develop strategies for dealing with the children. And most of them fall in love with the kids.

Each year after our last session in April, we have a pizza party to bid farewell to the departing high school senior volunteers. We invite the senior volunteers' parents to the party. Invariably, the volunteers' parents are shocked that their children have been so successful. Parents of the volunteers are usually quite moved when the children with autism and their families thank the volunteers for their service.

The program also has been a group undertaking for my family. We started the program two years before my youngest son was born. He started to come to the program in a car seat or a stroller, and now he, like his two older brothers, is developing into a strong volunteer. My wife, Pat, has rarely missed a session in 15 years.

I also have been fortunate to have had the full support of Wiley Malehorn Sirota & Raynes. As noted, when I need a volunteer, Jim McCreedy, Eugene Huang or even Rick Sirota can be counted on to fill a slot. Our business administrator, Deirdre Petersen, was a volunteer at our first session 15 years ago, and now comes to the program with her own children. My secretary, Ellen Matilsky, handles the extensive paperwork for the program.

The success of the program has been a source of pride for my family and for me. I measure that success by the satisfaction of the families served by the pro-

gram, by the fact that the families return session after session and year after year, and by the loyalty of the high school volunteers.

Has my legal training and experience been instrumental in the success of the Saturdays in Motion Program? Maybe in small ways. From time to time other programs and events compete for the YMCA's limited space. In those situations I always advocate vigorously for the Saturdays in Motion Program against any competing activities, and have been pretty successful.

In terms of volunteer retention, my volunteers know they get prompt, tailored and generally very helpful college recommendation letters, scholarship recommendation letters, National Honor Society recommendation letters and summer job recommendation letters. I also do what I can to make sure that every volunteer receives recognition from his or her school. I suppose some of that relates to lawyer-like skills.

I also am not afraid to be tough on the volunteers when necessary. Most, but not all of the volunteers, appreciate this. One former volunteer, presently a student at Notre Dame, told me that the Saturdays in Motion Program was the only thing in his life that wasn't all about him. I took that as a great compliment.

Finally, like most pretty good lawyers, I am persistent.

Fifteen years ago, the first recreation specialist I approached about my vision told me the idea of a program that included both autistic children and non-disabled siblings was "flat-out crazy." Another told me, with absolute assurance, that the levels of functionality in autistic children are too diverse for any kind of viable recreation program, and that I would never be able to attract volunteers because autism is "too tough." I ignored all of that (much as I regularly ignore "you have no case" warnings by adversaries and judges),

and, together with the Somerset Hills YMCA, made the program work. I have stuck with the program for 15 years, and it has become part of the fabric of my family's life. ☺

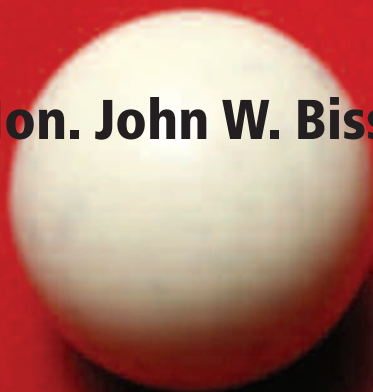
**Arthur L. Raynes** is a partner in the Morristown law firm of Wiley Malehorn Sirota & Raynes, and heads the firm's litigation department.



# THE TRIANGLE OF LIFE

A Speech to Newly Admitted Attorneys

by Hon. John W. Bissell





**Following is a speech Judge Bissell has made to inspire newly admitted attorneys. The message: The importance of family and hobbies to become a fully rounded professional.**

**L**adies and gentlemen, and most importantly our new attorneys, let me direct your attention to the game of pool. We all know what a pool rack looks like; it's an equilateral triangle. I am asking each of you to think of this triangle as a representation of your life and the way you would choose to live it. This triangle, of course, can be turned, and no matter how it sits, it's always the same. A different point may become its apex, but the other points then form a new base of size and stability equal to that which preceded it. Therefore, the equilateral triangle is the most stable of all geometric shapes.

For purposes of our discussion today, I would like you to think of the apex of this triangle as your profession and the manner in which you choose to pursue it and to conduct yourself in that pursuit. I will also ask you to think of one of the points at the base as being your identity, that is, who you really are, and include in that such things as your hobbies, your avocations, the other things that are individually of interest to you. Think also of the other point at the base of this triangle as your relationship and commitment to your family and those with whom you are particularly close.

For all the exhortation that you will hear from members of the bench, the bar, from associates in our profession, and indeed from myself, about the need for complete commitment and dedication to the practice of our profession, I ask

you to keep your life as a whole in proportion, an equilateral triangle. Avoid having the demands our profession imposes upon you rise to such heights, so dominating the skyline of your life that the base of this triangle shrinks and shrinks until the entire structure becomes no longer an equilateral triangle, indeed hardly a triangle at all, but an unstable, tottering tower. Let me take a moment to address each of the points in our triangle of life.

By all means, in the conduct of your profession, pursue nothing less than excellence and settle for nothing less. In doing this, be aware intimately of the standards of ethics that govern our conduct as attorneys, and maintain the level of your own conduct far beyond the minimums required by our disciplinary rules. Don't shirk the hard work that is necessary to produce your best work in order that your clients' interests can be served to the fullest, and in order that the fruits of your labor can flow down the inclines of this triangle providing the wherewithal to pursue your own interests and to participate with and confer benefits upon your family and loved ones. But, with all this, strive with equal vigor to avoid allowing your professional commitments to obliterate your own identity or to tower above your commitments to your family.

Be yourself, and keep being the person who you are. Keep your hobbies and avocations and develop new ones, some of which the practice of law itself may lead you to. Don't diminish the importance of these personal pursuits. Avoid the "I don't have time for them now" outlook. Better yet, look for new and interesting things to do either within yourself or as a member of your community. Do some of those things that you undoubtedly have thought about in the "I've always wanted to do" category. I suggest to you further that these personal pursuits should not only be fun and enjoyable in themselves, but they should be as far removed from the area of your professional endeavors as possible. When you do that, you are best preserving your own identity and gaining truly the re-creating of recreation that will allow you to return to your work, whether it is in the next hour, next day or next week, refreshed and with renewed enthusiasm.

While somewhat reluctant to use myself as an example, I can advise you that my main hobbies are softball, barbershop quartet singing and refereeing ice hockey. I enjoy them all immensely, not only because they are great fun, but also because they have absolutely nothing to do with my work. And whatever august professional position I may hold is absolutely meaningless to my fellow teammates, barbershoppers and hockey referees, as it should be.

Undoubtedly, nearly all of you have hobbies that allowed you to set aside the rigors of either school or your employment. Please don't give them up. Expand them so that you can continue to be who you are.



What about your family and loved ones? You know we have a lot of J.D.s in this audience, but we also have a lot of P.H.T.s out there. Now at this moment if I asked all the P.H.T.s to stand up, you probably wouldn't know what I was talking about. The P.H.T.s of this world are those who can proudly and wearily say upon the completion of your law school career, "while he was getting his J.D., I was getting my P.H.T. (putting him (her) through.)" Probably right in this room, and certainly in the lives of each of you, there is a P.H.T. with whom you have shared a considerable amount of your life and affection. It may be a spouse, parents, or both. Remember these people. Keep them in your lives. Keep them in your time. Give them and your children and your grandchildren the time and commitment they deserve in this equilateral triangle of your life.

There isn't a full-time litigator, myself among them, who, with young children, hasn't found himself in a position where he leaves his home before his kids are up and returns after they are in bed. There will be occasions when this is unavoidable, but please don't let it become a regular work pattern. Life, particularly with your children, is too short. At the very least, carve out evening and weekend time for them.

I recently went to a funeral of a universally respected member of the bar, a jurist in fact. In the eulogy this man was praised for his tireless dedication to his work. An example was given that on a summer afternoon when his children and grandchildren were at the beach, he could be seen sitting on his lawn in his coat and tie reading transcripts. My first thought, because it was appropriate to the occasion, was "my, what admirable dedication." But on reflection, I have thought, "what a shame." This man could have been on his hands and knees in the sand at the beach, building sand castles and wrestling with his children and grandchildren. I suggest to you that

if his life had remained an equilateral triangle that is where he would have been, and there would have been no accompanying disservice to those dependent upon his work efforts.

Of course, participation in family activities or projects is great recreation in itself, and it is also a great equalizer. Once again, it is awfully difficult to feel oppressed by the pressures of your job while attending a child's soccer game, touring the Museum of Natural History looking for the dinosaur exhibit, or patching a sewer line on your recreational vehicle in the middle of the Maine woods.

So, what I've tried to do here today is put in a word both for that self that is inside you and for the P.H.T.s of this world. Keep them in mind, and you will be able to achieve in your life the balance symbolized by this equilateral triangle. If I may employ in closing an often-used phrase, "the law is a jealous lover," and indeed that is so; demanding and deserving attention, dedication and tender loving care. But nevertheless, a lover only. Please remember this jealous lover isn't you, and isn't a member of your family.

Thank you. ☺

**Hon. John W. Bissell** joined *Connell, Foley LLP* in 2005 as counsel, and serves as chair of the alternative dispute resolution department. He also is a member of the firm's business litigation practice group. Prior to joining *Connell Foley*, Judge Bissell served 27 years on both state and federal courts in New Jersey, and retired as chief judge of the U.S. District Court of New Jersey in 2005.

# BALANCING THE LAW *A Novel Approach*

by Sal DeStefano

The conscientious practice of law often requires attorneys to stretch their intellectual muscles beyond the limits of comfort. Such cerebral straining might seem sufficient motivation for attorneys to pursue their careers day-after-day, week-after-week, and year-after-year. But for many women and men who, like me, have chosen the law as their life's vocation, even the most complex roster of corporate mergers, the most interesting docket of divorce matters, or the most stimulating appellate court calendar slowly, almost imperceptibly, loses its appeal as the sole reason to trek to the office on a daily basis.



**I**n fact, subjected to the incessant demands of clients, partners, judges, or bosses, the law may eventually lose its luster. In the worst case, it becomes drudgery. If that rush of adrenaline you felt on your first day of law school has faded into the haze of distant memory, perhaps you can cure your malaise by injecting a dose of balance into your life.

For me, that balance has taken the form of writing action-adventure novels. Don't get me wrong, I love what I do to keep my family fed and clothed. My first job out of law school—title examiner for Colonial Title and Abstract Service in Morristown—offered an ideal opportunity to marry my passion for real estate with my master's in business administration and law degree. Even today, as a co-owner of Colonial Title, my greatest thrills come from helping clients solve complex title issues they've written off as hopeless.

So why write novels? My day-to-day work requires I utilize, above all, my analytical skills. Rarely does examining a chain of title or researching a thorny title problem allow me to draw upon my imagination. Yet, as far back as middle school I've enjoyed writing fiction. When I was a boy, the legendary "Star Trek" television series had begun its famous run. The show so fascinated me I wrote my own "Star Trek" TV script. It wasn't an English assignment or a class project, it was just something I enjoyed doing. The itch to spill my imagination onto paper persisted in college, where I took several creative writing courses in which I wrote poems, short stories, and even a novella.

But unless you're John Grisham or J.K. Rowling, writing novels doesn't pay the bills. When the time came to make hard decisions about choosing a career path, I traveled a pragmatic road, relegating my interest in writing fiction to the basement of my priorities. I earned a master's in business administration, worked two years as an operations officer for a major commercial bank, then resigned to enroll full time in law school. After passing bar exams on both sides of Liberty Island, I landed a job at Colonial Title, where I applied my two advanced degrees to a new, more profitable passion—the law and business of real estate.

Immersed in the analytical world of title insurance law, a decade of learning and earning passed, and while I thoroughly enjoyed cranking out title exams and resolving title problems, every now and again I felt the urge to emulate the authors of the suspense novels I occasionally found time to read, including *The Andromeda Strain* by Michael Crichton and *Cathedral* by Nelson DeMille. Though reading novels required a fair commitment of time—a commodity that had become increasingly scarce—catching a movie on a Friday night offered a quick fiction fix. Parking my brain at the theater door for two hours, my adrenaline pumped non-stop watching thrill ride movies such as "Aliens," "Terminator 2," and "Die Hard." Still, I found life as a spectator wasn't enough, and I yearned to create my own fictional world of action and adventure.

About 10 years ago I made the decision to give it a go. But where would I find time to write a novel? I wasn't about to leave a business I truly enjoyed, and I couldn't ask my family to disappear for a few months while I played Tom Clancy. I did what any aspiring author holding a real job might do—added more hours to my day.

Instead of awaking at 6:45 every weekday morning, I forced myself out of bed at 4:45 a.m., stumbled into the shower, and dragged myself into the office half an hour later. As a morning person, the transition was easy, and those two extra hours proved highly productive. Pledging to write an additional six hours every weekend, I was able to devote 16 hours each week to pursuing my labor of love.

Now that I'd made the time, I had to come up with an idea. Unsure where to start,

I examined my own life's bank of experiences. I had no intention of writing a fictionalized account of my life. That would be way too boring. Instead, I sought to identify past experiences that had fired up my emotions, particularly those that had moved me to profound grief or great joy.

My first novel, *The Methuselah Gene*, tells the tale of a young father, a geneticist by trade, desperate to save his nine-year-old son, who is afflicted with brain cancer. While the novel is populated by antagonists of the human variety, my hero's ultimate foe wasn't a person at all, but the tumor killing his son.

When I was 13, my father succumbed to leukemia. Three years later, my mother was stricken with breast cancer and died when I was 20. Shortly before I sat down to write *The Methuselah Gene*, one of my dearest friends died a slow, painful death from stomach cancer. These early, life-altering experiences had left their mark on my psyche, and are likely the reason why I chose cancer as my first novel's antagonist. Perhaps it is no coincidence my second novel, *A Reason to Die*, also involves a hero grappling with cancer, but with an unexpected twist I won't disclose. If you hanker to write a novel, but lack an idea, look first at your own experiences, especially those that have charged your emotions, and start from there.

Armed with newfound time and a powerful plot, I needed a plan. Probably the single greatest deterrent to writing a novel is the sheer size of the beast. My advice is to not dwell on the huge mountain of prose that lies ahead. If you do, you'll despair and give up. Write your novel one scene at a time, one page at a time, one paragraph at a time. Tackle your book in small segments, but write at regular intervals. Set realistic goals. My daily quota is 250 words, or one double-spaced page. A modest goal, even for a practicing attorney, but the words add up. Write one page, every day, six days a week, for a year and a half, and you'll complete the first draft

of a 400-page novel. Take it one day at a time, but write as routinely as you brush your teeth or eat your meals. Do that, and you'll finish your book.

Once you've completed the first draft of your literary masterpiece, to stand any chance of publication you must engage in that often maligned, but always essential, process of editing and revising. So important is editing to your novel's chances of success that unless you're willing to devote at least half as much time to rewriting and revising as you did to penning your first draft, I'd suggest you don't even start. Writing the initial draft of *The Methuselah Gene* took approximately nine months. Adhering to my rigorous writing schedule, I devoted another six months to revising and editing.

You've finished your first draft and vetted your manuscript *ad nauseam*. Unless you're content keeping your timeless tome forever hidden from your colleagues of the bar and bench, it's time for the next step—looking for a publisher. The good news: Today's digital world affords aspiring novelists more potential avenues to publication than at any time in history. E-publishing, self-publishing, print-on-demand all are viable options available to everyone, often at a modest price. The bad news: That same digital technology is wreaking havoc in the traditional book-publishing industry, with far fewer mainstream publishers willing to give first-time authors a shot at their dream.

Around the same time I began revising *The Methuselah Gene* I started researching how first-time novelists got published. After reading several books on the subject, I chose to enlist the aid of a literary agent. After sending out numerous query letters and chapter samples, a reputable agent in New York City agreed to represent me, and submitted my novel to a dozen big name publishers. None bit. A year later, after my agent had moved on to other projects, I terminated our relationship and peddled the

manuscript myself to a few, carefully targeted independent publishers.

In 1999, Trans-Atlantic Publications, a small publishing firm in Philadelphia, bought the rights to *The Methuselah Gene*, and incorporated my novel into its New Millennium Writers Series. With an advertising budget commensurate with its size, little money was available for promotion, and my first novel sold only about 2,000 copies.

After I wrote and revised *A Reason to Die*, I once again sought the help of a literary agent. A different agent—known for his Hollywood connections—agreed to represent me. Fascinated by the book's premise, he pitched my second novel to several New York publishing houses, but again, none took the bait. They all loved the concept, but because my novel was so long—about 200,000 words—no one was willing to give it a home.

My agent was brutally honest. The publishing industry has become a nightmare, particularly to fledgling authors, and especially today, with so many competing forms of entertainment cutting into traditional book sales. Unless you're Dan Brown, you'd better limit your novel to 350 book pages, or about 100,000 words. He explained that in order to cover production and advertising costs, and still make a small profit from a 700-page book by an unknown author, a publisher had to charge \$29.99, maybe even \$34.99, at the store. How many people are willing to part with \$35 to buy a book written by Sal DeStefano? That's just the reality of the business.

But all was not lost. Three months after the last publisher passed on *A Reason to Die*, my agent surprised me by selling an option for the TV and movie production rights to Sony Pictures Television. As of this writing, Sony has not exercised its option, and odds are it never will. A company like Sony buys hundreds of options in any given year, and of those, maybe two or three ever make it to the big or

small screen. Still, that a major entertainment company thought enough of my story to spend shareholder money for the TV and movie production rights proved heartening.

Not content to allow *A Reason to Die* to languish unprinted, I explored the various publication options open to novelists. In 2006, I found a reputable print-on-demand (POD) publisher, Llumina Press, to give my story life. For a modest set-up fee, Llumina converted my manuscript into book format, designed an attractive cover, obtained ISBN numbers for the hardcover and paperback editions, registered my novel with Ingram, and created a unique web page for my book. The major downside of PODs—higher per unit cost than mass printing—is offset by the greater degree of control retained by the author over the publishing process. If you've thought about writing a book, consider POD publishing. Reputable POD publishers abound, and with a little research you should be able to find one that fits your unique writing style and temperament.

While over the last decade I've delighted in writing and publishing two novels, I've never entertained the idea of leaving my career as a title attorney. If anything, the harsh realities of the literary and cinematic marketplace have enhanced my enjoyment—and appreciation—of the title business that has afforded me ample sustenance. I find that by satiating my hunger for creative expression, when I'm done writing for the day I can focus more keenly on the analytical tasks of examining titles and framing solutions to complex title problems. Conjuring plot and characters gives me a much-needed balance in my daily routine, and ignites a spark that jumpstarts my day. ☺

**Sal DeStefano** and his partners own and operate Colonial Title and Abstract Service, LLC, located in Morristown. His latest novel is *A Reason to Die*.

# WHEN TRAGEDY STRIKES

How One Attorney Created Joy  
Where There Once Was Only Sorrow

*(Editor's Note: This profile of Morton S. Bunis was written by  
New Jersey Lawyer Magazine Editorial Board member Susan Storch.)*



Mort Bunis has been a lawyer for over 50 years. As a litigator, he has represented individuals, and corporate and public entities in diverse litigation matters. A partner with Sills Cummis for many years, he also has served as a special master to the New Jersey Superior Court. Lawyers who know Mort are familiar with his cunning wit and quick humor. Amidst looming deadlines, court dates, and contentious litigation, however, when calamity strikes one's family, even the most seasoned attorney might have trouble coping. That is not what happened to Mort Bunis when a horrific accident took the life of his 37-year-old daughter.

**O**n a summer day in Aug. 1998, Linda Bunis Haller had loaded her two young sons in their car seats and had just placed her Jeep Cherokee in park while she exited the car to close her garage door. Due to a manufacturing defect, the Jeep lurched into reverse and pinned Linda against the door. She was killed while her children sat in the still-running vehicle. Over an hour later, a family member discovered her.

### **Establishing a Charitable Foundation**

Both of Linda's two sons have learning disabilities. Rather than dwell on what could have been, only two months after her death, Mort established the Linda Bunis Haller Foundation for Special Needs Children with Linda's husband, Steven Haller, serving as the foundation's president. The charitable fund was set up as a private grant-making foundation to provide aid to children with disabilities and their families. For the past nine years, Mort has spent considerable time helping to run the foundation because, as he says, he has a "responsibility" to his daughter's memory. Some of the more difficult aspects for him have been learning the complex legal and tax aspects of nonprofit foundations, soliciting funds for a personal family charity, and establishing standards for awarding grants to nonprofit organizations.

### **Support of Legal Colleagues**

In addition to his family, Mort is grateful to his law partners, friends, and colleagues for their financial and moral support and encouragement. He and his family spend considerable time each year reviewing grant applications to determine which organizations, focusing on the concerns of special needs children, would best be suited for funding. While Mort did not wish to disclose the amount of money raised annually through his one-on-one personal appeal by phone and letters, all of the funds go to programs designed to help special needs children and their families. The foundation funds specific programs, rather than directly financing a specific child or family, looking to benefit as many

people as possible in as wide a range of services as possible. The following grants have been awarded over the past few years:

- **PATHWAYS FOR EXCEPTIONAL CHILDREN** is a not-for-profit organization that supports special education assistance for children. It received one grant to support a mentoring program for college students and a second grant that enabled children with disabilities in a preschool program to participate in integrated activities and field trips with a mainstream local nursery school. Pathways also helps children with severe attention deficit disorder (ADD) learn the value of money by taking them shopping and teaching them how to handle money. Mort is a trustee of Pathways.
- **THE JEWISH COMMUNITY CENTER METRO WEST OF NEW JERSEY** received a grant to support its services to people with disabilities who, the organization believes, are "entitled to the same basic human rights" as others. The grant supported parenting classes and activities for parents with special needs children.
- **THE CHERAB FOUNDATION** is a worldwide nonprofit organization working to improve the communication skills and education of children with significant speech and language delays and disorders. The foundation's primary area of emphasis is verbal and oral apraxia and severe neurologically based speech and language disorders that hinder children's ability to speak. The grant money was used to assist with the development of specific new therapeutic approaches, preventions and cures or neurologically based speech disorders.
- **MONTVILLE PARENTS OF EXCEPTIONAL CHILDREN** used their grant money to purchase sensory integration equipment and train staff in support of children with special needs for the Montville Township Board of Education.
- **A COMMUNITY SUPPORT GROUP IN MANCHESTER, VT** used its grant money to provide a winter recreation program, including ice skating, for persons with disabilities.

### **Creating a Vehicle to 'Do Good'**

Mort believes that for the most part, attorneys spend the

better part of their careers doing for others, not necessarily what they want to do for themselves. When he was faced with the loss of his daughter, he had a strong desire to do something that would directly benefit society. Since his daughter was active in programs that aided children with special needs, Mort wanted to take up the plight of children with disabilities, particularly those who have suffered multiple traumas. As he began researching and investigating the services available to families in various communities, he found a great need for additional financial support for such programs. One area that was eye-opening for Mort was learning about the many families who could not afford speech therapy sessions for their children, particularly where it was not provided by school systems and not paid for by insurance companies. He appreciated that children with serious ADD issues needed to be integrated in their community in a meaningful and productive way.

Upon establishing the charitable foundation, Mort was surprised at the great deal of personal satisfaction he received from helping others. He realized that he was able to help while maintaining his practice, and he looked forward to continuing his efforts well into retirement. Mort learned that kids are capable of doing countless things despite their disabilities.

### **Asking Others for Money**

While Mort appreciated that one of the most important aspects of a successful foundation is fundraising, he was shocked to discover how much he didn't like to ask others for money. To initiate his efforts he realized he needed to approach those who were closest to him: his colleagues and friends. Although appealing to people you know may sound rather straightforward, it can be embarrassing asking them directly for financial support if it is your own family's charity. Mort realized, however, that if you're going to do good for oth-

ers who cannot directly ask themselves, what's wrong with asking for contributions for them?

His approach to fundraising over the past nine years has been personal solicitation. He sends out a personal note at the end of November each year to those who have contributed in the past and any new contacts he's made. To date, the family has not spent any funds on administrative services or events. Mort is appreciative when the foundation receives donations. When he receives negative responses to his requests for donations, he feels that "life is far too short to let the negatives interfere." He finds that he has a rather high success rate, and is encouraged that more and more companies and firms support matching grants for charities.

### **Time to Enjoy Life**

What perhaps is the most striking aspect of Mort's commitment to the foundation is that he learned that if given the opportunity, children with special needs can really learn to enjoy their life. The most rewarding aspect for him is seeing the kids smiling and happy, which enriches his life as well. He humbly appreciates the fact that without the financial support of foundations, like his, many children with disabilities would not be able to experience such joys or excitement in their own lives.

### **Staying Involved**

Mort continues to be motivated by the fact that statistically, 70 percent of disabled children end up unemployed and need programs to help them thrive as members of society. Moreover, a key concern is what happens to these children as their parents age or die. Inspired by these issues, Mort became a member of the advisory committee for special need individuals with the Jewish Community Federation. He is now helping other organizations focus on what they should be doing to obtain grants and to

provide goal-centered programs for children. He also has encouraged school systems and some federal programs to expand services.

### **Encouraging Other Attorneys to Help**

Mort encourages attorneys to give back to their communities so they can experience the satisfaction of helping others. All too often, he says, we see lawyers when they are doing battle or in adversarial situations not necessarily indicative of their true nature. He continues to experience difficult times, but derives comfort from not only witnessing the benefit his work does for the community but, of equal importance, experiencing first-hand the kindness and generosity of those attorneys who are willing to help.

Mort provides the following advice to attorneys:

1. Identify what you'd most like to do with your time.
2. Consider a meaningful way that you might utilize your talents to help others.
3. Develop a plan for enjoying the work that you would do for others.
4. Appreciate the satisfaction you achieve from being of service to others.

### **Laughter Ever After**

On a humorous note, Mort stated that while in the past his wife always knew where he was (in the office), she now says she never knows where he is (school boards, charitable organizations, playgrounds, community centers and so on). He also laughs now when he thinks about how years ago he used to have a nagging thought of how he would keep himself busy if and when he retired. Now he knows he has a future filled with the smiles and laughter of the children he has helped and will continue to help. ♣



The sharpest criticism often goes hand in hand  
with the deepest idealism and love of country.

SENATOR ROBERT F. KENNEDY

# IN THE ARENA

Litigating for the ACLU-NJ

by Gary D. Nissenbaum





My life changed over Sunday brunch. It was early 2004, and I was sitting at a table on a sidewalk in Millburn, reading *The New York Times* and eating a bagel. The cover story concerned four attorneys who were military officers assigned to defend the accused terrorists in Guantanamo. While they had been ordered to do so, their commanding officers were upset that they were providing too effective and spirited a defense.

**H**owever, these attorneys had taken their oaths seriously. They advocated that their clients were entitled to a fair hearing with such basics as the right to cross-examine witnesses; the right to see the evidence against them; the right to be charged with a specific offense; and so forth. None of that was happening, and so these military officers banded together and brought the matter before the United States District Court, on the basis that the federal courts had jurisdiction to review the legality of their clients' detention. The article implied that, as a result of doing their jobs too well, their military careers were essentially over.

One of the military attorneys, Lt. Commander Swift, was asked the following question by a reporter just before Swift was to argue his case on appeal before the United States Supreme Court: "Why won't the government give the detainees the right of a trial?" He replied, "[t]he whole purpose of setting up Guantanamo is torture, and to do that, you have to escape the rule of law. Guantanamo is an implement to break the law. Otherwise, you could have imprisoned him much more easily in Nebraska." That was not the sort of statement that was looked upon favorably by his superiors. Lt. Commander Swift was ultimately forced to resign from the military, after being informed that he would no longer be promoted.

I remember that Sunday morning, finishing the article and having one overwhelming thought: Somehow, I must get involved in this. Although my decision was immediate, it was not that simple. I had not been trained as a civil rights lawyer. My firm's seven attorneys are divided between our commercial litigation and transactional practices. Generally, our *pro bono* work has consisted of cases in which one of our clients stops paying his account receivable.

While I always believed in the value of civil rights litigation, I also had assumed there were many others who would be more than happy to carry that ball down the field. I did not see a need to add my efforts to maintaining freedom in a country that seemed to be doing a pretty good job in that regard without my involvement.

Sept. 11, 2001, changed all that. Since that day, I had read account after account of arguably unconstitutional laws and initiatives being undertaken by our government. Guantanamo was only the latest. There was expanded wiretapping without resort to the Foreign Intelligence Surveillance Court; there was the designation of people as enemy combatants not subject to the Geneva Conventions; there was the president's statement that federal officials could open certain mail without a warrant. In short, I perceived that there was a blatant effort to marginalize the legal system and the constitutional protections it was responsible to enforce.

By 2004, it was clear to me that this was a basic struggle for control between the executive and judicial branches, and that the judicial branch was in danger of losing. It was a struggle that, if lost, would serve to completely collapse the fundamental constitutional values that I and others had simply taken for granted. The country might end up looking the same—it would still be called America and the flag would still fly—but it would be a dead shell of its former self. That special spark of individual liberty that made America different from the rest of the world would be gone.

And now, here I was reading about the military retaliating against its own officers for fighting to preserve, protect and defend the United States Constitution. What about the private bar? Didn't we have a role to play? On that pleasant spring Sunday morning, I came to the conclusion that without the involvement of private lawyers like me, this fight might very well be lost, and the character and values of our

nation changed irretrievably. It was that serious. The flag would still fly and we would still be called Americans; yet, that special spark of freedom and democracy would be lost. The country would be rendered a shell of its former self. The private bar could no longer rely on the usual suspects to do the heavy lifting. We had to step up.

Apparently, this was not an original idea on my part. When I volunteered to take on a civil rights *pro bono* matter for the American Civil Liberties Union of New Jersey (ACLU-NJ), I learned that there were more attorneys volunteering than there were lawsuits in the offing. Apparently, there were many others like me coming forward.

The numbers were impressive. Since Sept. 11, the national ACLU doubled its national membership to nearly 600,000. In that same period, the ACLU-NJ tripled to nearly 15,000. Nationwide, the ACLU now has 2,000 volunteer cooperating attorneys, making it, by far, the largest public interest law project in the country. It appears before the U.S. Supreme Court more often than any entity other than the government itself.

After a number of months, I met with Deborah Jacobs, the executive director of the ACLU-NJ, at their headquarters in Newark. She asked me to represent her in an ongoing dispute with the New Jersey attorney general. The case had been brought under the Open Public Records Act, and concerned grant applications for the Federal Office of Homeland Security's program to identify potential threat elements (PTE) in New Jersey.

I had never heard of this program, and I think it is a safe bet that most people reading this article have not either. That is part of the problem. I believe that if the public at large knew the details of what the government was doing in the name of this so-called war on terrorism, there would be a far larger sense of outrage. I am convinced

that the PTE program is only the tip of the iceberg.

In 2003 and 2004, the Federal Office of Homeland Security made enormous grants available to local law enforcement in return for identifying PTEs in their communities. It appears that this would usually come down to the chief of police and/or county prosecutor secretly identifying the ne'er-do-wells in town, the ones the police keep an eye

on (see *Investigation* notice) super-database, which was supposedly used to track threats against the military. In a front page article, *The New York Times* quoted the Pentagon as stating that even if a person in the database is found free of suspicion, they are kept on the list because someday they might be a suspect again. This super-database may be accessed by 28 organizations, including the National Security Agency (NSA), the Central Intel-

**In 2003 and 2004, the Federal Office of Homeland Security made enormous grants available to local law enforcement in return for identifying PTEs in their communities. It appears that this would usually come down to the chief of police and/or county prosecutor secretly identifying the ne'er-do-wells in town, the ones the police keep an eye on.**

on. These are people who did not necessarily commit a crime, nor for whom there is necessarily probable cause to arrest or detain. Nevertheless, they are people who, in law enforcement's view, represent a potential threat. This is a completely new type of police work: a purely visceral approach to law enforcement. The government identifies the people or organizations who may someday commit a crime. Perhaps it is not so new after all; George Orwell wrote about it, as did Franz Kafka. But that was fiction, and this is not.

New Jersey identified over 30 individuals and entities as potential threat elements in three counties (Hudson, Cape May and an unidentified county). The protocol required that this secret list then be given to the FBI for investigation. However, if the person or organization were found to be free of suspicion, it would not end there.

To the contrary, we believe that the name would then be placed in the Pentagon's TALON (threat and local obser-

vation) Agency (CIA), the Joint Terrorism Task Force (JTTF) and, perhaps most chillingly, foreign governments cooperating in the so-called war on terror.

Of course, technology moves on. In mid-2007, the Pentagon announced that it was upgrading the TALON database with a better, more streamlined version. The information will be preserved, and ultimately enhanced, with a more comprehensive system.

Working under the supervision of the ACLU-NJ's legal director, Ed Barocas, my associate, Neelam Singh, and I have litigated over the last two years against not only the New Jersey attorney general, but also more than a dozen municipalities. Yet, due to a combination of stone-walling and blanket assertion of privilege, we still have not learned which municipalities in the three applicable counties actually identified PTEs.

Our litigation is ongoing; how it will turn out is anyone's guess. The government has largely resisted our requests for documents concerning even the

program's general application in New Jersey. This is especially curious because we are not seeking the actual names of the PTEs at this time. Instead, we are merely seeking enough information to allow us to cogently address the larger issue: convincing a court to step in and rectify the fact that this program has no judicial oversight. It is our position that without some basic level of judicial review, a law enforcement official could simply list as a PTE some local anti-police-brutality activist, a rival of the party in power, or even the Quakers (who the FBI spied on for holding anti-war discussions), and no one would be the wiser. As Justice Louis Brandeis famously observed, sunshine is the best disinfectant.

In essence, this is simply a different aspect of the same battle that was fought by Lt. Commander Swift. It is a battle that ACLU cooperating attorneys are fighting throughout the United States. As in Guantanamo, the judicial branch is being sidestepped in the name of simply getting the people "everybody knows" are the bad apples. Unfortunately, our country has an infamous history of going after the people everybody knows are a problem. Just about every ethnic group has had a turn on that merry-go-round at one time or another, while the flag flies above and the rest of us stand to pledge allegiance "with liberty and justice for all."

I smile when I hear lawyers complain that the legal profession never made good on the promise it originally held out to them. The law promises nothing. It simply offers opportunities. It can provide a good living, an interesting and creative way to use one's analytical powers, and an honorable way to help clients in need. But in addition to all that, in some small way it also provides us with the opportunity to write a sentence or two in the canon of American history. After all, from 1776 through the present, lawyers have played a pivotal role at every critical point. Having a law degree allows us to

expand into the larger world around us. It is an all-access pass to play a part in the ongoing history of our nation.

It is time for the private bar to step up in far larger numbers and play the important role for which it has been trained. Think about it over a bagel. Maybe you'll come up with something. ☺

**Gary D. Nissenbaum** is the managing principal of the Nissenbaum Law Group, LLC, a law firm with offices in Union and New York City.



# **HITTING THE WALL AND HANGING MY SHINGLE**

**by Scott D. Grossman**

I hit the wall in 2003, and the wall hit me back, hard. After years of suffering with ulcerative colitis (UC), I was told in the spring of 2003 that I would have to have my entire colon removed; if I didn't, I was certain to develop colon cancer. When I got the news, I was 37, and other than the UC, a pretty healthy guy. I worked hard, and I played hard. I was physically fit and active, and felt I had the world at my feet.



At the time, I had been with my firm for about five years; I proved myself in plaintiff's personal injury, made the firm a lot of money and was in the early stages of negotiations about becoming a partner. It was only a matter of time before my career would be going to the next level. I anticipated that my hard work would eventually pay off and I would reap all the benefits of being a partner: the autonomy, the decision-making responsibility, the opportunities, the ego boost, and, of course, the money.

While I kept my eye on the prize of partnership, even before I became very sick, deep down I couldn't ignore the little voice inside of me that was speculatively whispering that maybe being partner wasn't all it was made out to be. I tried to snuff out that voice, for while I was spending considerable time and energy working toward that goal, I was gradually becoming aware that I didn't have time for much else.

Being an attorney brings me great satisfaction. But I also enjoy writing, I enjoy following politics and have aspirations of one day becoming involved at the local level, I have a strong desire to do good work that gives back to my community, and family is very important to me. I was becoming increasingly sensitive to the fact that I wasn't able to pursue some of these interests because there was no time.

For a time, I just figured, like most of us do, that I'd have time to do it all "later." I shrugged off the call to solo life, because I was on the path so many of us strive for, and it was within my grasp. As a law student, I had fantasies about going solo, but truthfully it was always in the context of maybe one day down the road—nothing I took too seriously. I think all lawyers at one time or another dream of having their own firm. But I wasn't really planning *for* it because, I guess, I wasn't really planning *on* it. I went to law school, got the degree, passed the bar, got the job, and worked hard in order to make partner.

But, again, the little voice inside my head was questioning my current trajectory. Maybe partnership in a firm wasn't for me after all. Maybe building something from the ground up on my own was the way to go for me. I knew I wanted more for myself—more autonomy, more control over my destiny, more time for my family—and I started to think that maybe hanging a shingle out on my own was the only way I was ever going to get what I wanted.

Then I got sick, and my world turned upside down and kind of stopped at the same time. When I was told I was going to lose my large intestine, it was a tough thing to get my head around. I couldn't imagine what life was going to be like on the other side of the surgery, and I was scared it wasn't going to be a life worth living. Around the same time I learned I needed to have surgery, my wife learned that she was pregnant with our son. Now, if that wasn't something to live for, I didn't know what was.

My wife and I look back on 2003 as the year of three surgeries, one to remove my colon, one to rearrange the plumbing that remained thereafter, and the third an emergency procedure to save my life from an adhesion that had wrapped itself around my small intestine about a week before my son's due date (talk about high drama).

But 2003 also was the year my eyes were opened to the reality of new possibili-

ties, and to the realization that life is short, too short to count on doing it later. I recall one day during my last stint in the hospital in Nov. 2003, looking out the window at Central Park in New York City, watching life go on without me. Watching people strolling, picnicking, rollerblading in the park, enjoying life, I felt was a sign. Maybe it also was the intravenous painkillers I was on at the time, but I knew right then and there that after this ordeal, I would go it alone, so I could create a different type of lifestyle for myself and my family.

Though I returned to work at my firm in Jan. 2004, shortly after my son was born and about six weeks after my third surgery, I returned a changed man, both mentally and physically. I was at a crossroads, and I really needed to make a decision. I talked it over with my wife, who was amazingly fully supportive. She had her reservations, of course; we had just had a baby; she was getting ready to go back to work after her maternity leave; she was worried about my health and our security. The timing probably wasn't the greatest in the grand scheme of things, but she looked at me and said it was "now or never," and we took the plunge. So, in May 2004, I left my firm behind. Six months after my final surgery and four months after my son was born, I took a deep breath, and hung out my shingle.

It's been three years since I opened the doors to my firm, the Law Offices of Scott D. Grossman, LLC. Overall, it has been and is a rewarding, sometimes frustrating, a little isolating, and at times overwhelming experience. I have to be all things in the office that you just take for granted when you work for a firm: the rainmaker, office manager, benefits administrator, legal secretary, calendar clerk, paralegal, managing partner, and junior grunt-working associate all at the same time, and it's a tough juggling act.

Admittedly, I'm not the greatest

multi-tasker. Honestly, there are days when I feel like there are just not enough hours to get what I need to do done. I am up many nights obsessing over all the matters I am handling, all of the things I need to do to take the firm to its next level; there is definitely a whole spectrum of stresses and anxiety that comes with being your own boss. Just this past year, thankfully, I was able to hire someone full time to assist me, which has proved to be a tremendous help.

But despite all of the stress and anxiety, I would not trade it for the world. The feeling of making it all on my own initiative is a great one; it motivates me to keep going. I definitely work harder than when I was with the firm, but since it's my name on the letterhead, I am not resentful. I am excited about the future of my firm and my life. I've got a family cheering me on and depending on me. And, I have the ability to freely pursue opportunities that are important to me.

I've had to become pretty creative in order to pursue all sorts of opportunities to learn and grow. In addition to the work that makes up the bulk of my personal injury practice, I have taken on a large caseload consisting of cases where I am a law guardian for the state of New Jersey. As a law guardian, I represent the rights of children of all ages involved in family situations that are tragic, often where drugs or physical violence and mental abuse robbed them of their innocence. I give these kids a voice in court, and hopefully I am making a difference. Cases often involve termination of parental rights trials, where the outcomes determine the fate of my clients' childhoods. The stakes can't get any higher, and emotions run deep.

I feel immense satisfaction in advocating on behalf of those who have no voice and often are caught in the center of competing interests that aren't necessarily in the best interest of the child. While not required, it is important to

me that I personally observe the surroundings of the children I represent. This enables me to have a different perspective than what we typically get as legal advocates. Being involved at the front lines is what I like the most. It reminds me of the work I used to do before law school as a probation officer. The law guardian work enables me to give back to the community, and I take the work very seriously.

I also took on a number of *pro bono* assignments after attending a seminar on immigration law to expand my horizons. With the support of Legal Services of New Jersey, I worked on three cases involving people who were arrested and incarcerated on various immigration law violations. It was a terrific experience, and at times overwhelming, since I have learned that immigration law is very technical, but I enjoyed being exposed to a new practice area.

Writing about issues affecting people's rights also has been a passion of mine. From the healthcare crisis in this country to the insurance industry's crippling hold over New Jerseyans to changes in laws that impact consumers, I recently launched a blog to get my message out there. I am an advocate for information as a means to empower, and my blog is the means for me to communicate with the public. Sometimes the entries are passionate rants about the insurance industry's delay, deny, defend tactics, and other times I am reminding the public to wear a helmet when they ride their bicycles. While this blog is also a marketing tool, it satisfies my interest in writing what I want, when I want, for the public.


Drumming up business is one of the other major focuses of my practice. As a solo guy in a sea of larger, more established firms, being and staying competitive is tough. As a personal injury lawyer, it's pretty much a waiting game: waiting for an unfortunate accident to occur and waiting for the phone to ring

from a potential client. Making sure my name is the one a potential client thinks to call first is a priority. I've employed all sorts of strategies to get my name out there, some of which work and some of which don't. It's a crapshoot, a lot of trial and error, but I've learned you have to take a risk in order to reap a reward. I've advertised in the local papers, on bar menus and beer glasses; I have a website and web blog.

Getting my name out to the community is of the utmost importance, and I am trying to position myself as a local attorney with connections to the community, with significant firm experience and a personal touch. I treat my clients the way they deserve to be treated, with respect and courtesy. And my clients trust me, and refer their friends and family members to me when the need arises.

My life today is rich and complex. I think and worry about work all the time, but I am grateful because all of the effort I expend thinking and worrying about all that needs to be done at the end of the day is for the betterment of my life and my family. I wanted a different type of life, and I am on my way to having it. I located my office within 10 minutes of my home, allowing me to spend a bit more quality time with my family. I am grateful for all that I have. The road may be a bumpy one, but it's worth it. After the year of three surgeries, I learned that life is too short to sit around waiting for someone else to determine your destiny. And when you hit the wall, you need to evaluate whether it is best to crash through it or go around it. ☺

**Scott D. Grossman** is the principal of the Law Offices of Scott D. Grossman, LLC, practicing personal injury law in Freehold and Saddle Brook.



As lawyers, we're constrained by facts. A client comes to us with a problem—a deal to put together, a lawsuit to commence or defend—and the first thing we must do is learn the facts. From then on, all the advice we give and the actions we take are dictated by the immutable facts of the case.

FREE TO  
FUDGE THE  
FACTS

by Ken Isaacson



For those of us who are litigators, this is often confounding. We have a meritorious case and a deserving client. If only the facts weren't so...so factual. You know what I'm talking about. Why'd the client have to write that particular email? Why'd he have to say that in front of all those witnesses? It's such a great case, and we're still in the right, but the client went and did something stupid. And now, as Desi used to tell Lucy all the time: "You've got a lot of 'splaining to do." If only the facts were just a little malleable, we could avoid a bit of unnecessary tap dancing.

As a lawyer, I write for a living. And I suppose there are cynics who'd even say that lawyers write fiction for a living. We've all heard the complaint that litigation isn't about finding the truth, it's about finding whose version of the truth will prevail. While there may be something to that view, I can honestly say I've never fabricated facts, or intentionally hidden them, to gain the upper hand in a legal matter. But what if we weren't bound to the reality that the facts impose upon us? What if, in the middle of your big case, when you realize that the facts aren't playing out just as you'd hoped they would, you could go back and change things, un-write the ill-advised email, or un-say the indiscreet remark? You could make things come out just the way you want them to be.

That's the great thing about writing legal thrillers. I get to make stuff up. And if I don't like how it turns out, I get to go back and change it. I'm free to explore "what ifs" and "how abouts" to my heart's content. I can be perpetrator, victim, witness, prosecutor, defense counsel, judge and jury. In short, I get to make up my own facts, and there's nothing unethical about it!

My first legal thriller, *Silent Counsel*, was published in Sept. 2007. The idea for it came to me upon reading a true account of a hit-and-run incident along a highway in Florida some time ago. In that case, the driver hired an attorney and charged him with the task of negotiating a plea agreement with the authorities while at the same time keeping his (the client's) name secret under a claim of privilege. A court battle ensued, testing the bounds of the time-honored doctrine of attorney-client confidentiality: Could the simple name of a client be "privileged information"?

That case resolved itself before the novel legal question was answered by the courts—the driver ultimately came forward on his own. But the magazine article got me thinking. What if the court were to hold that a lawyer attempting to negotiate a plea agreement for a hit-and-run driver didn't have to reveal his client's identity? The prosecutor, no doubt, would refuse to bargain. But what if the mother of the small victim found out that the lawyer knew who had killed her child but maintained his silence, relying on the privilege? How far would the mother go to find out who killed her child? And how dedicated to the principle of attorney-client confidentiality would the attorney be when the going got tough?

With these questions in mind, I set out to write *Silent Counsel*, the story of attorney Scott Heller and mother Stacy Altman. After Stacy's six-year-old son is run down in front of their house, with no witnesses to the tragic accident, she learns that the driver has hired Scott to negotiate a plea arrangement with the prosecutor. But he's instructed Scott to keep his name secret until a satisfactory agreement is in place. The prosecutor refuses to make a deal, and the court rebuffs Stacy's

efforts to force Scott to tell her—or even the authorities—who his client is, holding that it is privileged information. Since the court won't do anything to help Stacy track down her son's killer, she takes matters into her own hands, and is determined to make Scott talk—at any cost... When Stacy's stalking of Scott's young daughter escalates into a kidnapping, Scott makes the only reasonable choice a parent can—cooperate and give up the client. That's when Scott discovers that doing the right thing isn't as easy as he thought, and now the mother isn't the only one looking for the child's killer.

When I first sat down to begin writing *Silent Counsel*, I didn't have a clue how to proceed. I decided to approach the task as I did a legal case, and I remembered an instructor in one of my continuing legal education classes advising of the importance of developing a theme for your case. "A case without a theme is just a bunch of testimony," I'd been told. "A car crash doesn't happen in a vacuum—it's a tragedy that involves real people and real consequences." Cloaking your case with a theme gives jurors a reason to stay interested and alert: "This case is not just about young Will being injured when the buckling mechanism on his infant seat came loose. It's about the kind of corporate greed that places the cost of recalling a defective product and the benefit of saving a child's life on opposite ends of a scale—and tips that scale against the child." Now, with that theme in the jury's mind, otherwise dry testimony about how this strap connects to that latch may be, if not interesting, at least a little more bearable. There's a reason to care.

In the context of a legal case, we start—necessarily—with the facts as they're presented to us. We search for a theme that relates well to those facts and exerts the right amount of emotional pull to grab hold of the jury. Writing



fiction, though, allows the reverse.

When I started, the page was quite literally blank. There were no facts, only an idea: What if the attorney representing a hit-and-run driver didn't have to reveal his client's name because the court held it was privileged information? With that intriguing premise in mind, I began constructing facts: I decided that the victim of the driver had to be a child, because readers (my jury) would care more about this arcane legal issue if the attorney-client privilege was being used to shield someone responsible for a youngster's death. I knew that the lawyer in my story would face a difficult ethical dilemma—needing to protect the confidences of a client while feeling that the “right” thing to do would be to help the grieving mother.

Because I had never faced such a challenge, I decided my lawyer should (like me) be unaccustomed to criminal practice and protecting the rights of the guilty. I made him a corporate litigator handling a “quick referral” for a friend—just a matter of making a few phone calls to the prosecutor to see if a deal could be made. This way, in the process of writing, I could experience the doubts and misgivings of my protagonist as he did, for the first time. And, I decided that my lawyer should have a young child of his own, so the conflict he felt between duty and right would strike close to home.

From this germ of an idea, and these few basic facts, emerged competing themes: *Silent Counsel* would be about a lawyer's struggle with his personal beliefs when confronted with the fundamental need for secrecy between client and attorney. It also would be about a mother's frustration and rage at a system that places more value on a legal technicality than bringing the killer of a six-year-old boy to justice.

I knew little more about *Silent Counsel* than this when I began writing. I've since heard the writing process com-

pared to driving from New Jersey to California in the dark, being able to see only as far as your headlights illuminate. You know where you are, you know where you ultimately want to be, and you have a vague idea of how you're going to get there. But all you know for sure right now is the ground you'll be covering within the range of



your headlights—and something just outside your view may change your plans. You discover that the bridge you planned to take across the river is washed out, and instead of going directly from Point A to Point B, you find yourself driving miles along the river until you come upon the next way across. You planned on driving west, but unforeseen weather conditions force you to take the southern route instead. This is how writing was for me: I'd start a chapter knowing generally where I was heading, with some specific short-range ideas of what route to

take, and find out quickly that the characters had something else in mind. I'd watch, almost a spectator, as dialog unfolded, and I'd discover things about my characters and the story that I hadn't known before.

That's when it becomes really useful to be able to control the facts. Remember, I lamented a lawyer's inability to un-write the ill-advised email, or un-say the indiscreet remark? In the middle of writing fiction, when the story takes an unexpected left turn, and the sun-shiny day mentioned a few chapters ago no longer suits your purpose, you can simply go back and create a thunderstorm. Believe it or not, it actually takes some getting used to. I remember the first time during the writing process when an action one of my characters was about to take just wasn't consistent with the facts up to that point. I was stumped. How could he possibly do that in view of what had come before? Then it dawned on me—what I had already written was not etched in granite. I could go back and rewrite history. A little thought and a couple of keystrokes, and a new path opened for my character. That was heady stuff.

As lawyers, we all have the tools necessary to write fiction. We're an imaginative and creative bunch, we can organize facts and concepts, and we know how to convey our ideas in compelling fashion, in writing. And, our day-to-day activities are fertile grounds for material. Don't like the ruling the judge just made in the middle of your trial? Just sit back and enjoy conjuring up the fate that might befall him if he were a character in the book you're writing. ☞

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FROM JUSTICE  
TO LAUGHTER

by Shaun Eli Breidbart



Why is it a popular career move for attorneys to become stand-up comedians? Other professions don't have similar career changes—there isn't a preponderance of dentists who become jazz trumpeters, for example. Subway motormen don't often become tap dancers.

**B**ut Al Lubel left trial law for the stage, winning “Star Search” and appearing on “The Tonight Show” with both Johnny Carson and Jay Leno, and Dan Naturman went directly from Fordham University’s School of Law to New York’s comedy circuit. Naturman, who recently made his second appearance on the Letterman show, has also appeared on “Late Night with Conan O’Brien,” and has had his own special on Comedy Central.

Jeff Kreisler, another lawyer turned stand-up comedian and comedy writer, recently won the Bill Hicks Spirit Award for Thought-Provoking Comedy at the New York Underground Comedy Festival. Karen Bergreen also left corporate law for the stage. In addition to making regular appearances at top New York City comedy clubs, Bergreen teaches comedy, to children. Maybe some of these children will skip law school and go straight into comedy, as did comedian Jill Twiss, who decided a few days before law school that she would be better suited to making people laugh. And she does, appearing frequently at comedy clubs in New York City, upstate New York and in her former home state of South Dakota.

Dean Obeidallah went from law to stand-up comedy and

just finished touring the country performing with his stand-up comedy troupe Axis of Evil, a group of professional comedians with Middle-Eastern ancestry. The group was recently featured on their own Comedy Central special. The son of a Palestinian father and a Sicilian mother, Obeidallah says that on Sept. 11, 2001, he went from being a white guy to being an Arab, which didn't particularly make air travel easy for him, but did give him more notoriety as a comic.

Is there something particular about stand-up comedy that attracts people from the practice of law, or is it simply that law and comedy have similar skill sets? Is structuring a joke a bit like structuring a legal argument? You put down a bunch of facts directing people to a conclusion, and then you make a wrong turn to a faulty conclusion, or a punch line, in order to prove your point. Courtroom theatrics may look good on TV, but it's often just emphasizing the law, or the facts of the case, that wins. There's very little pounding the table. And similarly in stand-up comedy—it's stating the evidence, telling the story, making the observation, that leads to the funny conclusion.

Perhaps, too, it's the Professor Charles Kingsfield factor from “The Paper Chase”—students choose law school because

they think they're smarter than the professors and will easily be able to defend themselves during the abuse we've all been led to expect when we show up on day one. Similarly, comedians are often just one step ahead of the audience—we know where the joke is going, so it's no surprise to us, just to the audience, until we lead them there. Every time the audience laughs it's like getting an opposing witness to recant on cross. An applause break is like having the judge threaten to hold opposing counsel in contempt. Appearing on "The Tonight Show with Jay Leno" or "Late Show with David Letterman?" That's like making partner.

Plus, we get paid for it. It's a great way to make a living, although it does take a number of years before a comedian's income reaches even a first-year associate's starting salary. Of course first-year associates have to wear business suits, and may have to put up with abusive senior partners, whereas comedians, even if we suffer from the occasional heckler (and it's less common, and less tolerated than you think), we get to retaliate. Whether it's facing a cold, unfriendly audience or just a plain, old-fashioned, drunk heckler, possessing the microphone as well as years of experience gives us the upper hand. Unlike lawyers, comics almost always win. And there are no ethical rules against comedians dating clients. For more than 20 years, Jay Leno has been happily married to a woman he met in a comedy club.

One thing that many attorney-comedians have in common is that their material might be a bit more intellectual than typical comedian fodder. Another thing many—such as Bergreen, Kreisler and Naturman—have in common, is that they attended Ivy League schools and have been featured in the Ivy League Comedy Showcase<sup>SM</sup>, a show I put together specifically to promote smart, clean comedy. So while not every attorney

can become a comedian, all can reap the benefit of the career change of some of their ex-colleagues.

Following are interviews I conducted with attorney-comedians Paul Mecurio, Karen Bergreen and Don Petersen:

### **Paul Mecurio**

A graduate of Georgetown University Law School, Paul worked as a corporate attorney for Willkie Farr & Gallagher in New York, and as an investment banker for CS First Boston. As a comedian he's made dozens of national television

**Every time the audience laughs it's like getting an opposing witness to recant on cross. An applause break is like having the judge threaten to hold opposing counsel in contempt. Appearing on "The Tonight Show with Jay Leno" or "Late Show with David Letterman?" That's like making partner.**

appearances and has won an Emmy and a Peabody for his writing on "The Daily Show" with Jon Stewart.

**Shaun:** When did you start performing?

**Paul:** 1996. I was doing banking but had a real pull to try stand-up full-time, so I was arranging to do comedy full-time, I sold my New York City apartment and started to live the life of a struggling comic.

**Shaun:** What made you decide to try comedy?

**Paul:** I sold some jokes to Jay Leno, and got taken by seeing him perform my jokes on "The Tonight Show"—it was the most powerful thing I'd ever

seen. For the first time, I think the idea of creating something from nothing and seeing people react was exciting and appealing to me. As I was writing, I started thinking about performing. So, I'd sneak out of work at night to dive bars in New York City on open-mike nights, because that's where you can get work at the beginning. I'd sneak out, then go back to work on M&A transactions. It got nerve-racking because deals would blow up and I'd get back, smelling of beer and cigarette smoke and the senior partner would be yelling. I'd claim I was in a conference room on a conference call, but I smelled like a bar. One night I was at a downtown bar in New York City called Downtown Beirut 2—a real dive, with drug pushers, pimps—and a drunk patron got slashed. I opened with "Nice to be here at Downtown Beirut 2, I always wanted to follow a slashing," and the guy who got cut threw bloody napkins at me. At the time I would take off my jacket and tie on the way to the club then get re-dressed in a cab going back to the office. My boss saw my bloody shirt and wanted to know what happened—remember he didn't know I'd left the office. I told him I was working on a VERY hostile merger deal.

**Shaun:** Do you talk about law on stage?

**Paul:** Yeah, I do, I talk about what it was like. I didn't hate the law, I had a great experience at my firm, worked on fun deals, was given a lot of responsibility at a young age, I just got drawn to comedy. It was a hard decision. I had security, but then all of a sudden I'm gonna give all this up. This was not a negative reaction to anything I did as a lawyer at all. I grew up middle-class, so being a lawyer was a great thing for me.

**Shaun:** Did you talk about law when you started out and were still working as an attorney?

**Paul:** No, I was living a secret life, and I didn't want to alienate the other

comics, didn't want struggling artists to think I was just some rich dude, and I didn't want the people at the law firm to think I wasn't serious. My girlfriend, now my wife, didn't know either. I didn't want to tell anybody, but the people on Wall Street, the lawyers, were the coolest about my decision. They said they always wanted to write the great American novel, etc. It was incredible support which helped fuel me and keep me positive when things weren't necessarily that positive when you're starting out. It's a struggle. I remember the managing partner said, "Good for you, I'm really proud of you, now you have a career, not just a job." They were very supportive and understanding, and admired the guts to walk away and go for it.

**Shaun:** Did anything about law or law school prepare you for a career in comedy?

**Paul:** Yes, I think that in the craft of writing jokes you have to be creative and look at all different angles of an issue to get the best joke, so in that way it really prepared me. And also in a business sense—having a business plan and an organizational sense. Having a great legal education and law experience was helpful. Having a law degree is a good education to get because it trains you to work in a certain way. You're taught to think differently and no other graduate degrees do that. They make you more proficient in an area but they don't alter who you are. If you take that into this business it's a plus, because a lot of people don't have the ability to think that way.

**Shaun:** What did your family say when you quit Wall Street to pursue comedy full time?

**Paul:** They couldn't understand it. They weren't on Wall Street. They saw me make it, achieve what I wanted to achieve, why would you give that up? It was certainly legitimate what they were saying, and I could understand what they were saying, because it wasn't a

logical thing to do. Parents are parents, and they worry about you.

**Shaun:** And what do they say now?

**Paul:** Now, with the success and "The Daily Show" and the Emmy, when my mother saw the Emmy Award she was really impressed and people would come into her furniture store talking about "The Daily Show"...she would tell them I worked on it and they were impressed and so she'd be impressed. So through other people she saw that I've achieved that level of success.

**Shaun:** Telling jokes for money sounds like a glamorous job. What's the down side?

**Paul:** Unpredictability, the subjective nature of it.

**Shaun:** How has your life changed since you went from attorney to working comic?

**Paul:** Creatively it's very fulfilling, but it's less predictable and less secure. In that way it's more stressful, but more rewarding to me to be creating stuff that's my own, that has my stamp on it. It's changed mainly for the better. There's a price you pay, but it's definitely worth it.

**Shaun:** Do you have any advice for lawyers who want to become comics?

**Paul:** Be prepared. If you want to do it as a hobby, there's not much advice to give. If you want to do it as a profession, try to discover what your point of view is, make sure it's as unique as possible, try to hone it, then be ready, when you make the leap, to give up the security to pursue something you're passionate about.

### **Karen Bergreen**

Karen is a Harvard graduate and former corporate litigator who describes herself as a dictatorial mother of two, but given her calm exterior and peaceful demeanor on stage it's hard to believe she's a dictator at home. She has performed stand up on Comedy Central's "Premium Blend," on "New Joke City" with Robert Klein and on Come-

dy Central's "Tough Crowd" with Colin Quinn. She's a frequent performer at New York City's top comedy clubs, and a much-sought-after emcee, as well as a regular feature, in the Ivy League Comedy Showcase.

**Shaun:** When did you start performing stand-up comedy?

**Karen:** I was clerking for a federal judge when I really started, but the lifestyle terrified me. Then, after being a lawyer for four years, I wasn't crazy about that lifestyle either.

**Shaun:** Do you remember your first show?

**Karen:** I had done it a couple of times right after college. It's a weird feeling, like being in a pageant or at your wedding. Your friends are all there watching you.

**Shaun:** Do you ever talk about law on stage?

**Karen:** Never, it's a turn-off (for the audience). I'll talk about it only if it's a private event for lawyers or people who deal with lawyers—like a corporate show for finance or consulting professionals. But at a comedy club, for people out on the town, no. The impression of lawyers is different from what it really is, so real jokes won't work—it's too inside. I'll do jokes about a job interview, office politics, that kind of thing. But that could be any office, or working in a restaurant, or a school.

**Shaun:** Did anything about law or law school prepare you for a career in comedy?

**Karen:** Writing a joke is like writing a legal argument—framing a set of facts to achieve a certain end.

**Shaun:** What kind of law did you practice?

**Karen:** I started out working at a big firm doing commercial litigation, then I clerked for a judge, then I did some criminal defense work while making the transition to working comic.

**Shaun:** Is litigation at all like comedy?

**Karen:** In the sense that you have to figure out how to win your audience—

the mood is different but the goal is the same, you want people to pay attention to what you're saying.

**Shaun:** You talk about your family a lot on stage. Do you find that your kids have your sense of humor?

**Karen:** The three-year-old says things that he knows I don't want to hear because he thinks it's funny, like "Should I make a lot of noise?" Both kids are funny, even the one-year-old makes me laugh, likes to play tricks, stuff that makes a one-year-old laugh. He calls me daddy instead of mommy because he thinks it's funny.

**Shaun:** How has your life changed since you went from attorney to working comic?

**Karen:** People say mean things about lawyers, but I like maintaining my contacts with my lawyer friends—that world is more stable, it provides more intellectual stimulation, a nice balance to have in addition to having friends in the entertainment world.

**Shaun:** Do you have any advice for lawyers who want to become comics?

**Karen:** For anyone—just do it.

**Shaun:** Did people tell you that you were funny when you were younger?

**Karen:** Absolutely.

**Shaun:** Is being on stage the same as being funny with your friends?

**Karen:** No, nothing beats being funny with your friends. Now that I perform professionally, it's more organic making friends laugh.

**Shaun:** Do you find they expect you to be funny all the time?

**Karen:** No, not with my friends.

**Shaun:** What about others?

**Karen:** When I meet new people they're shocked when I say I'm a comedian because they don't find me funny. Then they come to a show, and it's "Wow, yeah, I see it now."

## **Don Petersen**

Petersen is a professor at Michigan's Cooley Law School and a working

comedian performing primarily in the Midwest.

**Shaun:** How did your stand-up career get started?

**Don:** I went through Second City Conservatory, which was probably the hardest thing I ever had to do—it's two years worth of classes, strictly improv comedy until the very end, then we put on a sketch comedy show of sketches that we wrote. I was at least 10 years older than anyone else.

Law school was easy compared to Second City, no question about it. We used to practice all the time, there were fights, we started with 100 students and ended with six—some quit and some were asked not to continue. I think they kept me on because I was a good mediator and kept people from going at each other. After graduation we started a troupe and performed, but it was too hard to co-ordinate our schedules since I was working as an attorney. I decided to try stand-up comedy because I could do it by myself. I went to an open-mike night, and started from there.

**Shaun:** What's your act like?

**Don:** My goal is to work every show clean. I used to do political humor, but I seemed to alienate too much of the audience.

**Shaun:** Do you talk about law on stage?

**Don:** Yes, a little bit, but I don't do lawyer jokes, *per se*. First, I discuss what it's like to be a member of a profession that everybody hates. Second, I do some fish-out-of-water jokes. I talk about going from a welfare childhood in Detroit to Harvard Law School. I also talk about going to my law school reunion. I had my own little firm, but all my classmates were working for the top firms in the country. And they looked up to me because they wanted to be doing what I was doing! Of course, now I'm a professor and a comic.

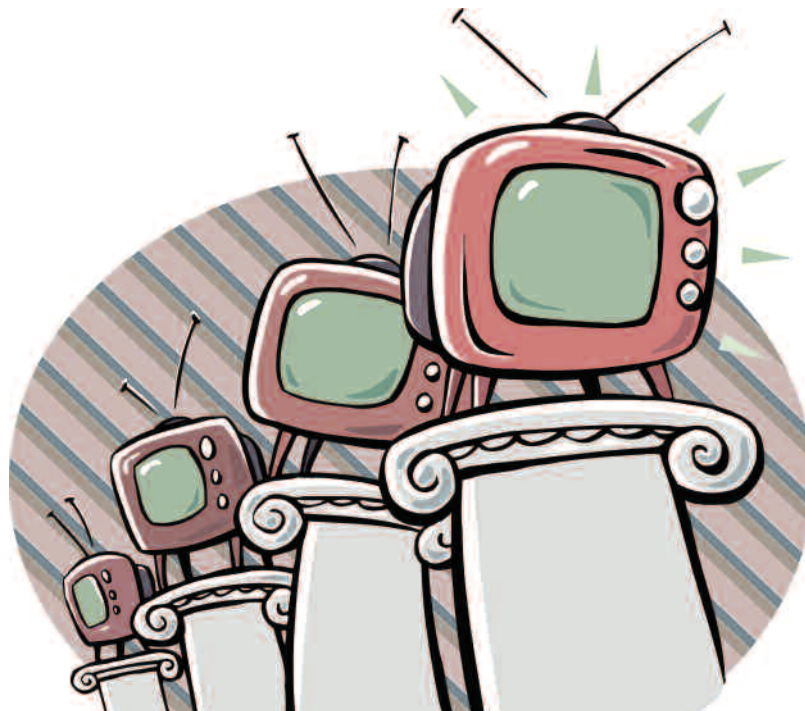
**Shaun:** Has teaching helped your comedy?

**Don:** Comedy helps my teaching—stage presence is helpful when I'm in front of students. And I've learned to look at the audience to learn how they respond, and I change my act on-the-go, depending upon their response. Similarly, I have learned to read students to see if they understand their secured transactions. Teaching helps me write some material, though, because I discover what 25-year-olds are thinking. It helps me with young audiences. Really, though, comedy has helped me be a better lawyer—talking to a jury, talking to clients. My partner didn't want clients to know that I was performing because he feared they would think it meant I wasn't serious about the law. But they loved it. They all wanted to come see me. And now it's proudly on my resume. Performing is a release from a high-pressure law job. Comedy is high-pressure too, but you get instant gratification—positive feedback—when people laugh. In law nobody thanks you for a good job, you only hear about it when you do a bad job. I know just walking on stage that they'll like me, and then when I'm off stage they'll want to know me. Whereas when you walk into a room and tell people you're a lawyer, well, people just don't like lawyers.

**Shaun:** What do you think about performing for lawyers?

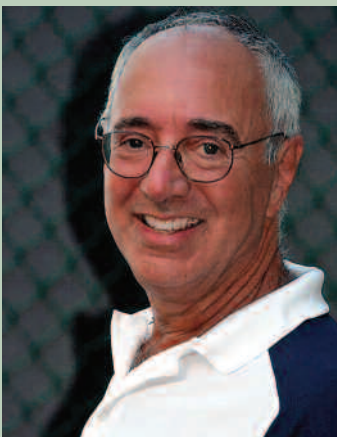
**Don:** I've performed for law students—they're a good audience, more so than lawyers. I prefer to perform for students—they study so hard that they're looking for a break. If you can make them laugh they're very happy. ♪

**Shaun Eli Breidbart**, a comedian, is the producer of the *Ivy League Comedy Showcase<sup>SM</sup>*, which promotes clean, clever comedy. His personal comedy material is available at [www.BrainChampagne.com](http://www.BrainChampagne.com).



# THREE CAREERS AND COUNTING

BY ROGER LOWENSTEIN



A few years ago, a reporter asked John Grisham whether he thought he might want to return to trial practice, even if only for one case. Grisham responded, "Don't you get it, man? I made it over the wall!"

In my case, I've now made it over two walls, and am well into my third major career. I was a jury trial attorney for 22 years, starting as a state public defender in Newark, then federal public defender, then private practice. By the time I took a break in 1990 to write for television, I had tried 100 jury trials to a conclusion, making me something of a dinosaur. Actually, 100 trials are easy to get to if the first 50 occur in the first 12 months of practice. The head of the public defender's office in Newark suspected I was a spy planted by the American Civil Liberties Union, otherwise why would a Harvard lawyer clerking on the New Jersey Supreme Court take a pay cut (from \$10,000 annually to \$9,000) in order to try posnarc (possession of narcotics) cases?

I was assigned to Siberia, the courtroom of the Honorable Joe Lyons, who gave no sentencing break for plea bargains. Every case went to trial. Judge Lyons liked it that way. He was cordial, in every sense of the word, but convicted defendants got the max and the wheels of justice spun rapidly. Once, on a Friday, I had two juries deliberating in different rooms and the judge had me pick a jury in a third case.

I moved to Los Angeles in 1990, thinking that I would just take a year sabbatical. Running my own firm in Hoboken was stressful, and I needed a break. I was extremely lucky, my luck enhanced a bit by having a terrific girlfriend (now wife) in the television business. I went directly from the airport to a warehouse in downtown L.A. where a TV lawyer drama, "Equal Justice," was being made. Thomas Carter was the executive producer (*capo di tutti capi*), and was frustrated that he could never get his technical advisers (all busy lawyers) on the phone when he needed them. He hired me on the spot to be his technical adviser at \$300 a week. Among other tasks, I was to sit on the set and help the director help the actors look and act like real lawyers. I succeeded in getting the actors to button their jackets when they rose to address the court, and I obtained a small orange crate for Sarah Jessica Parker to stand on behind counsel table so she didn't appear to be a dwarf litigator.

Then the writers discovered that there was a lawyer with 100 trials sitting on the set, and they started pulling me into writers' meetings and picking my brain. I was thrilled! But when I told my girlfriend, she was horrified—here I was giving away my most precious resource to people making \$3,000 a week.

It was worth it, however, to get such an insider's view of how television works. We lawyers are quick studies. I started immediately to write spec scripts (scripts of episodes of hit shows used as writing samples), got an agent (my girlfriend's best friend's husband, whose arm was twisted out of its socket to take me on as a client), and then an amazing bit of luck happened: David Kelley decided to leave "L.A. Law" to create "Picket Fences," and the new executive producer wanted a real lawyer/writer on the staff. My first staff writing job was on the best show on TV.

I worked steadily as a writer for 10 seasons, making enough money for long enough that my Writers Guild pension is now vested, but never feeling driven to succeed in the way I had felt as a practicing lawyer. The stakes are not as great, obviously. Looking back on my writing career, it feels like I had a wonderful 10-year vacation. I wrote some good episodes, learned the craft, lived inside the entertainment industry.

While I was on staff at "L.A. Law," I went back to Harvard for a class reunion. I was on a panel with Ralph Nader, David Halberstam and who knows who else, and all the audience wanted to know was what it was like to be on "L.A. Law." I knew I lived in a sick society when Morris Dees asked me how to get a guest appearance on the show.

As it became clearer to me that I was way too old to withstand the horrible ageism in the television business, I began to look around to see what else I could do. Coming from New Jersey, I had been struck by the segregation in Los Angeles. L.A. is a giant failed melting pot. To get to where I work now, I have to travel 40 blocks through Little Armenia, Thaitown, Historic Philipinotown, and finally into Koreatown. But none of the towns talk to each other. And the public school system, the supposed engine of our democracy, is a dysfunctional mess.

My college roommate runs a fantastic charter school in Detroit, and I went to visit him and was inspired. I also visited great charter schools elsewhere, including North Star Academy in Newark. And so I teamed up with an educator and founded the Los Angeles Leadership Academy, a social justice-themed middle and high school. We are in our sixth year of operation, and have 410 students in grades 6–12. This year is our first graduating class. We serve the poorest families in California. The school is 80 percent Lati-

no, 15 percent African-American, four percent Korean, one percent other.

The school began in a seedy motel, scheduled for demolition to make way for yet another condo project. Facilities are the bane of the charter school movement, because the state gives you the awesome privilege of creating a public school in your image, but makes you pay for the building privately. Most charter schools are in underwhelming facilities, especially in a place like Los Angeles, where a 500-square-foot condo is \$500,000.

Suddenly an opportunity arose where I was able to convince the board of directors of a failed residential group home/school for pregnant teens to let me take over their facility in a non-cash transaction, as long as I continued some service to the foster care community, albeit in a non-residential format. I took over a \$5 million building by assuming liability of approximately \$2 million. The transaction was absurdly complex, and required every ounce of my legal training. I am stunned by how much lawyer stuff I am forced to use in this world of public education, where the enemies of charter schools are constantly figuring out ways to throw roadblocks at us.

There are more triumphs than setbacks, however. Just last week we were awarded a \$1 million acquisition grant from the state of California. With this help, our first graduating class next year, our pioneers, will have spent their senior year in a fantastic new school building.

I have to say, that founding a school is the hardest task I have ever undertaken. When people ask what it takes to start a charter school I routinely answer, "naivete." But little by little we are finding our way, and I am confident of our future. Maybe I will retire some day, but not this year. ☺

**Roger Lowenstein** is the founder and executive director of the Los Angeles Leadership Academy, a social justice-themed charter public school in Los Angeles. The school is decidedly college prep, and serves the poorest families in California.



# *Capturing the Moment*

## *Photography Survives a Career in Law*

**BY TERENCE W. CAMP**



When it came time for college applications and interviews, I had a creative thought: I was going to find a liberal arts college that offered majors in both photography and journalism, on my way to becoming a photojournalist. Growing up in the 1960s, my parents always had *LIFE* magazine around, and I loved it. The photography in *LIFE*, then published monthly, was the magazine's heart, and it was just stunning. At a young age, those photos made a lasting impression.

**M**y plan, however, peaked and then hit a roadblock. The first liberal arts college where I interviewed, on hearing my vision, suggested that the school I really should consider was Rochester Institute of Technology (RIT) in New York. With an application pending, I interviewed at RIT. The school was known as a premier photo school, and was closely associated with and supported by corporate neighbor, Kodak. At the outset, the admissions officer enthusiastically announced to me and my parents, “Congratulations! Your application has been reviewed and you have been admitted to RIT.” A seeming done deal unraveled a month later when the documentation came. It essentially read, “Congratulations on your admission. However, the program to which you have applied—The School of Photography—is currently full at this time. Here are your options....”

Selecting option three, the wait list (but looking elsewhere while that was pending), led me to liberal arts without photo or journalism at Drew University in Madison. A week after my acceptance to Drew, RIT offered me admission to the Photo School. I declined, instead opting for Drew, where I majored in political science. That major included a semester in Washington, D.C., at the height of the Reagan years. While I did get caught up in Potomac fever (the magnetic draw of politics and life in the nation’s capital), I overcame the temptation to settle in Washington. In the final leg of the journey toward law school, I seriously considered the U.S. Navy’s Officer Candidate School (Richard Gere’s movie “An Officer and a Gentleman” was huge at the time) and the Peace Corps. Cooler heads prevailed. Three years after graduation from Drew, I happily accepted my law degree from the Dickinson School of Law (which later added “at Penn State University” to its title and organizational structure) in Carlisle, PA. After a Middlesex County judicial clerkship, I arrived at Budd Lerner, P.C., in Short Hills in 1989. I’ve remained there ever since.

Outside of law and family, I’ve had three longtime passions: photography, music and cooking. This story has a lot to do with the first, something to do with the second, and nothing to do with the third. My lifetime passion for photography has, fortunately, created, tied into and supported my legal career and other interests.

### **A Father’s Inspiration**

At its most basic level, photography involves three essential elements beyond the photographer: a subject, a camera and the moment captured in a photo. While today a 35 mm camera system with multiple lenses is mostly ancient history, in the 1970s it was the norm—and my father thrived on lenses and their cases. So my *LIFE*-inspired photo interest was complimented by intrigue with my father’s array of lenses, flashes, light meters and so on. The most striking component of this arsenal was the Vivatar 85–205 mm zoom lens—a heavy dinosaur today, a bold statement of quality and craft then. I had the questions and Dad had the answers. I eagerly absorbed what he offered and what I read in the photography magazines of the day; I believe there were only two.

### **School Days**

By seventh and eighth grade, I spent a lot of time skipping classes for darkroom work—more often than not with the written “pass” leave of our vice principal/yearbook advisor. I kept my grades up and participated in class so I got a little leeway when it came to attendance. By high school, I was yearbook editor and presented scheduled photography lessons to my yearbook staff. These informal classes

encompassed photo composition, including the rule of thirds, depth of field, the relation between aperture and shutter speed, etc. My darkroom years earned me selection as senior class shutter bug (an annual designation long since abandoned, I’m sure).

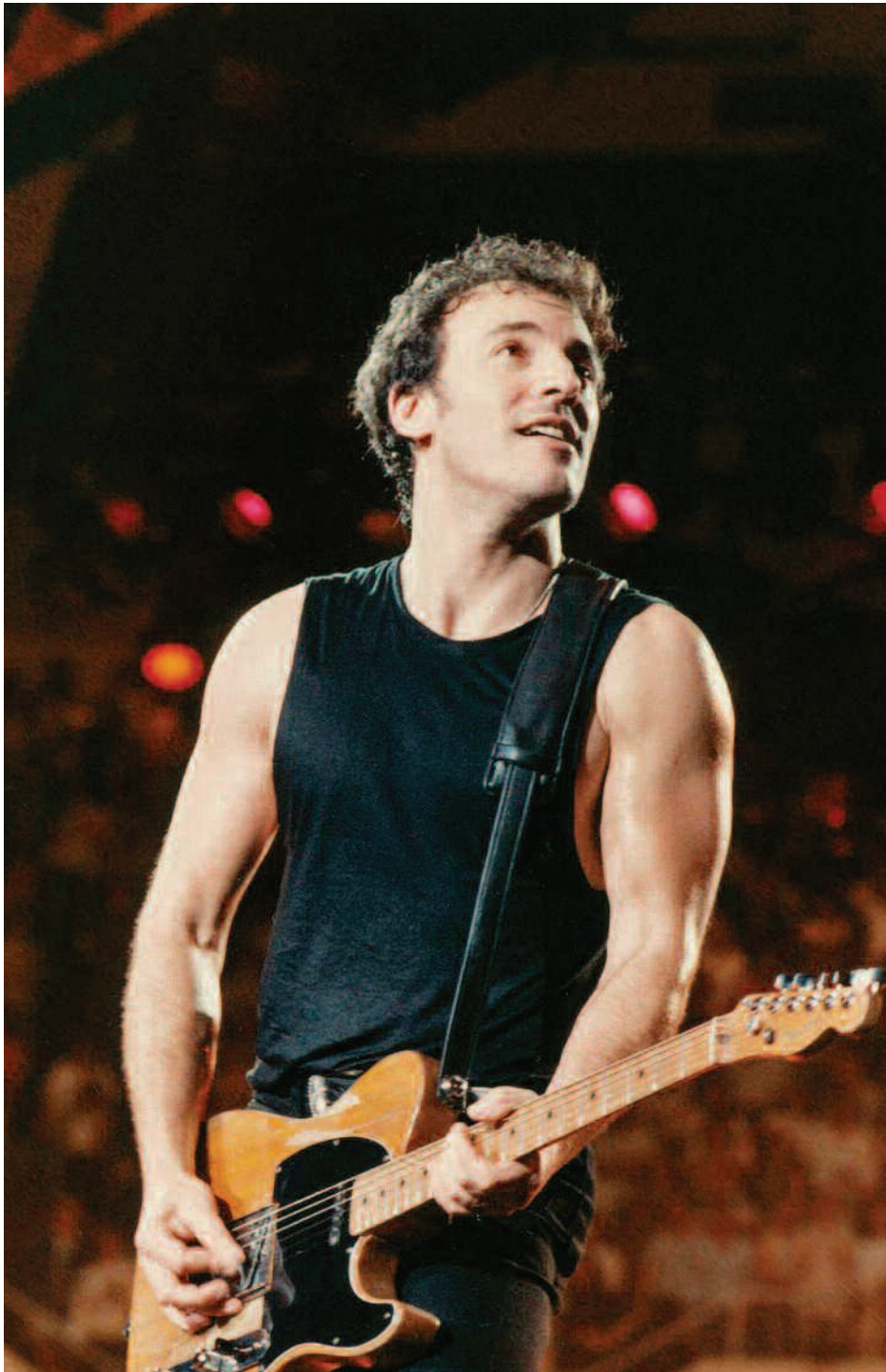
### **A Passion for Rock and Roll**

I won’t belabor the music interest angle, but I’m a serious musicophile. My first real concert (the Carpenters at Westbury Music Fair notwithstanding), was KISS at the Philadelphia Spectrum (Rock and Roll Music Hall of Famer Bob Seger opened) with several female, eighth grade classmates and one’s minister-father. I do recall being so concerned about the expected volume that I brought a plastic bag of aspirin with me—never used but I still have them as a memento.

Now, concerts are a photo challenge. Typically, you aren’t very close to the stage. The lighting looks good to the naked eye, but in the age of film was often at the low limit of what film could handle. And most fundamentally, you aren’t permitted to take pictures. Recording artists have their rights of copyright and publicity, and reasonably act to protect them. So as a driven young photographer, you improvised. That typically involved disassembling the camera from its lens, leaving the standard lens home and bringing the super-zoom. The camera body was stowed under clothes somewhere where you would not be frisked. The zoom lens? “It’s just a telescope, man.” Somehow, I actually got it past a security guard on that basis on the one occasion when I was questioned about it.

### **A Favorite Subject**

Growing up at the Jersey Shore, I was, naturally enough, a Springsteen fan. By the late 1980s, I had attended several Bruce Springsteen and the E Street Band concerts, and had been fortunate



enough to catch several of Bruce's legendary surprise jams at the Stone Pony in Asbury Park. Bruce brings to the stage an incredible energy and passion. Capturing that on film became a goal.

It played out on April 1, 1988, at the Nassau Coliseum on Long Island. Applying the aforementioned camera stowage technique, I got in the camera and the Vivatar zoom. I also had the good fortune of getting tickets to this sold out

show that afternoon on a ticket drop, and they were good—lower level, in line with the front lip of the stage, second row, and right next to Springsteen biographer and music critic, Dave Marsh.

Band on, I got the courage to assemble the camera and take a photo. I had done it, mission accomplished. The question was, now that I had captured at least one photo, was the greed of shooting a whole roll of film going to

get me caught and ejected, and cost me the film? I went for it, which facilitated a moment and a photo that has led to years of pride, my office gallery, related networking and a photo exhibit.

Late in the performance, house lights up, during show-stopper "Rosalita," Bruce steps atop a speaker right in front of me. Point, focus, shoot—closed my eyes, nailed it, knew it. Thank goodness, because the earlier show photos weren't that great.

### **Holding Onto the Photography Bug**

The image of Bruce, which has never been sold and never been published, became a centerpiece to a number of photo-related projects and activities. Moreover, a great deal of photography—featuring a variety of subjects—has followed the 1988 shot. Of course, once you're practicing law, everything you do has the potential to relate to or impact that practice. So I've accomplished that with photography.

I wasn't quite sure how my firm would feel about a wall of framed photos, several of which are concert shots. Nevertheless, about 15 years ago I began the process of obtaining enlargements of chosen photos and having them custom framed. Then, with hammer and nail, I created my office gallery at Budd Lerner. Fortunately, I got the "classy" review from the firm.

Now I had an extra reason to invite clients, contacts and potential clients by the office. The gallery provides me the opportunity to display my photos and serves as a business networking tool.

In 1996, I had an opportunity to take the gallery to another level. Having been away from my *alma mater*, Drew University, since graduation in 1985, I attended my 10-year reunion in 1995. Uplifted by the experience, I accepted an invitation to become involved in alumni fundraising. During reunion weekend in 1996, Drew permitted me to present a photo exhibit, "Capturing the

Moment: The Photography of Terry Camp at Drew University.” The exhibit remained for over a month, and included a reception, attended by Thomas Kean, then-university president and former New Jersey governor, as well as friend and national recording artist John Eddie, among others. A year later, Drew again borrowed some of my photos for an art show. In the early days of the ongoing revitalization of Asbury Park, I participated in a photo exhibit on Cookman Avenue there.



show thing, rather than the office-size, framed enlargements that I’ve displayed. In addition, I recently became aware of an NJPAC, attorney-based event that featured the art works of attorneys. *The New Jersey Law Journal* presented “A Celebration of Lawyers in the Arts III” on Sept. 19, 2007, to benefit New Jersey Volunteer Lawyers for the Arts ([www.njvla.org](http://www.njvla.org)). While I missed the deadline this year, it is something I look forward to supporting and participating in at a future date.

On a personal level, family and kids

Mets had made a dramatic, and creative, hand-slap slide into home plate to score the go-ahead run in a game. The next day, that moment was absolutely nailed by Silverman in the *Times*. I have kept that page nearby as I reflected on this lifetime focus on photo. I’ve shared that Milledge shot with others, but it is frustrating that I cannot include it here.<sup>1</sup> Such is the law of copyright.

It’s always a moment of personal satisfaction when I see a great photo and

**During reunion weekend in 1996, Drew [University] permitted me to present a photo exhibit, “Capturing the Moment: The Photography of Terry Camp at Drew University.” The exhibit remained for over a month, and included a reception, attended by Thomas Kean, then-university president and former New Jersey governor, as well as friend and national recording artist John Eddie, among others.**

I’ve also had a photo featured as cover art on a CD single, “Another Lonely Christmas,” released by John Eddie. I was leaving a music studio in New York City with John a few days before New Year’s Eve 1994. John was about 10 steps in front of me carrying his guitar case, the city street lined with snow, cars parked on either side and dim street lights providing a glow. Seeing all that, I frantically grabbed my camera from a bag as we were walking—had to keep talking so the shot I saw would not change. It worked. And although the lack of light made focusing nearly impossible, that lack of focus became key to the eventual photo.

There is always a dream of more photo shows and publication. But practicing law, now for just under 20 years, does keep a person very busy. I would someday like to do a real photo exhibit, taking select photos and doing the full-size art

are naturally favorite photo subjects. A singular moment occurred at my son Dylan’s first Little League game. Dylan was five—his first at bat at T-ball. My gallery now features the shot, in which Dylan displays excellent form, a level swing and gets good lift on the ball, and the ball is right there in the image, popping off of the bat.

#### **A True Inspiration**

A true inspiration for my past and future photographic efforts is photographer Barton Silverman. Silverman is a senior sports and other sections photographer for *The New York Times*. I was reading the *Times* one day about 10 years ago and was struck by an outstanding photo in the sports section. It was Silverman’s. Over the years, it has happened again and again. In fact, it happened as I was writing this article. Lastings Milledge of the New York

find Silverman’s credit below it. In sum, watch for Barton Silverman images in the sports section of the *Times*, even if you would not otherwise go there. Ironically, about a year after my photo exhibit at Drew, which I had titled, “Capturing the Moment,” Silverman released a book of his photos. He titled it, *Capturing the Moment*. ☞

#### **Endnote**

1. But see *New York Times*, July 13, 2007, at D3.

**Terence W. Camp** is a shareholder with Budd Lerner, P.C. in Short Hills, and vice chair of the Entertainment, Arts & Sports Law Section of the New Jersey State Bar Association. His practice includes entertainment law and a wide range of litigation. Camp is also past president of Business Network International’s Networker’s Choice Chapter in Florham Park.

# THE GOOD LAWYER

## Finding Meaning Through Service

BY PAULA A. FRANZESE

"I have come to the frightening conclusion that I am the decisive element. It is my personal approach that creates the climate. It is my daily mood that makes the weather. I possess tremendous power to make a life miserable or joyous. I can be a tool of torture or an instrument of inspiration, I can humiliate or humor, hurt or heal. In all situations, it is my response that decides whether a crisis is escalated or de-escalated, and a person humanized or de-humanized. If we treat people as they are, we make them worse. If we treat people as they ought to be, we help them become what they are capable of becoming."

GOETHE



The ability to derive meaning from our experiences as lawyers depends in significant measure on whether or not we are willing to believe that the law is a good and noble profession. It is not so much the ability to feel optimistic at the start of one's career, when spirits tend to be high and expectations great, but rather the capacity to persist in this hopefulness, over time and against all odds, that is the stuff of greatness.

**T**hat hopefulness can be found only in service. Albert Schweitzer made the point years ago, when he said to a group of graduates, “I don’t know what your professional paths will be. But I do know this. The only ones amongst you who will be happy are those who have sought out, and found, ways to serve.”

Entire books have been devoted to the shortcomings and failings of the legal profession.<sup>1</sup> Lawyers are vilified in countless realms.<sup>2</sup> Many in our ranks have opted out.<sup>3</sup> Others share feelings of significant discontent.<sup>4</sup> Against this backdrop, it takes courage to choose to believe that the law can and does afford opportunities to do well and, most essentially, to do good. But it does. And the choice to believe that (it’s always a choice) becomes its own reward.

We must take care, then, in defining our profession and our place in it. What we think about most, expands. What we think about most, we move toward. With our thoughts and core belief systems, we create a whole range of experiences. In the world of those experiences, we do not get what we want. We get what we are. A collegial and kind practitioner will serve a collegial and kind profession.

The rewards of compassionate practice are not always immediate. Sometimes colleagues disappoint, and matters are fraught with acrimony, but we can choose to hold tight to our esteem for this craft and its participants anyway. We are who and what we choose to love, not who or what loves us. True love looks for ways to make other people’s lives better.

A few years ago, my daughter Nina, then seven, discovered “The Wizard of Oz” for the first time. Thereafter, whenever she met someone new, she whispered to me, “Mommy, is that person a good witch or a bad witch?” It occurred to me that this may be a perfect lens through which to view what we do. As lawyers, we can be good witches or bad, using the power that comes with our skill and expertise as a tool to heal or to humiliate, to transcend or to add injury. The challenge is to be a good witch in what can sometimes feel like a wicked world.

We all know our share of cynics, described by one writer as “those people who tell you they see things as they really are, and that things are really rotten. They believe that no one is sincere, and that everyone has secret, selfish reasons for the things they do. They’ll tell you that everything is rigged against you, and no one means what they say. The world, according to the cynic, is a cold and cruel place.”<sup>5</sup>

Cynicism has been described as a belief in nothing.<sup>6</sup> “People who are cynical, or jaded, make their own lives cold because they lack courage. It takes courage to believe in things; sometimes things will disappoint you, sometimes people will let you down. To have faith is to risk having your heart broken, and the cynic isn’t willing to take that risk.”<sup>7</sup>

As lawyers, we must be willing to take that risk. People can be mean and cruel and irresponsible, but it is up to us to be good to them anyway, and to help when we can. Everyone has their share of sorrows, and everyone has something to teach us.

“If we treat people as they are, we make them worse. If we treat people as they ought to be, we help them become what they are capable of becoming.”<sup>8</sup> To choose to see the potential that resides not just in some of us, but in all of us, and to act on that promise, is to risk a broken heart. But a broken heart has more room.

As a young attorney and new law professor, I remember phoning home and speaking with my dad. I had been working on a *pro bono* housing court reform project, and felt agitated and disappointed at how local politics, greed and

petty squabbles were getting in the way of a real reform effort. I was complaining when my father interrupted me and said, “Could it be that you’re thinking too much about what you’re not getting, when you should be thinking about what you’re not giving? We get what we give. Is there something that you are withholding from this enterprise?” At the close of the conversation, sensing my weariness, my dad reminded me that no act of generosity is ever wasted. He continued, “Our lives are shaped most not by what we take with us, but by what we leave behind.”

Those words became a prophecy of sorts. My dad died, unexpectedly, only days later.

Carlos Castaneda wrote, in one of the Don Juan allegories: “The trouble with you is, you think you have time.” That is the trouble with all of us. The time is now for us to remember who we are and what we stand for, and to show up, and speak up, as the givers of hope to people and communities in despair.

There has never been a more important time for us, the lawyers, to enter the fray. Abuses are perpetrated in the name of the law. Too many are denied, by poverty or circumstance, access to the law. We live in a world divided by fear. That fear can make us doubt ourselves, believing that we are somehow ill-suited or ill-equipped to meet the challenges at hand. At those times, especially, we must define our mission mightily. Could it be that “our deepest fear is not that we are inadequate?” Could it be that “our deepest fear is that we are powerful beyond measure?”<sup>9</sup>

We are here to close the gap between what is and what ought to be. We are here to be the voices of compassionate honesty in a world that is filled with too much brutality. We are here to make the difference, with one kind impulse and one generous response, rendered one person, one cause and one day at a time.

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We are here to use our unique expertise to give people hope. And this is what we as lawyers do, first and foremost. We give people hope.

When all is said and done, our clients may not remember what we did or what we said. But they will remember how we made them feel.<sup>10</sup> The antidote to hate is not more hate. The antidote to fear is not more fear. It is our capacity to love that softens the hard edges and lightens the dark places.

When I was in fifth grade, our teacher challenged us to raise dollars for afflicted families. I took this imperative very seriously. I worked hard, going from door to door to raise funds. Finally, I had collected \$27. When I presented it, some of my classmates made fun of me. (I will not mention names, but I could.) They passed notes around to each other. One said: "Who does she think she is?" I felt ashamed. I came home, and on television that night were clips of a young Robert Kennedy, challenging Americans to be catalysts for the good. He told the story of the starfish. A young boy is enjoying the seashore, as are thousands of beautiful, living starfish. Suddenly, the tide begins to pull out, leaving the starfish stranded. The boy begins picking them up, one at a time, and casting them back out to sea. Soon, a man happens by, observes the scene and says: "Hey, kid, give it up. Can't you see that with the tide pulling

out as quickly as it is, what you're doing doesn't matter?" The boy looks down at the starfish in his hand, the one whose life is about to be spared. With tremendous sincerity and strength of purpose, the boy replies: "But it does matter to this starfish."

As I write this, as you read this, there is a starfish in each of our hands. Seek the wisdom to see that it is there, and find the courage to respond with compassion. We heal this world not with the grand or sweeping gesture, but with the earnest effort, rendered one person at a time. After all, the person who saves one life saves the entire world. ☺

#### Endnotes

1. See, e.g., Sol M. Linowitz with Martin Mayer, *The Betrayed Profession: Lawyering at the End of the Twentieth Century*, (1994), (recounting inadequacies and shortcomings of contemporary law practice); Anthony T. Kronman, *The Lost Lawyer*, (1993), (deploring near-disappearance of the "lawyer-statesman ideal."). These themes are explored in some of the author's earlier writings. See, e.g., Paula A. Franzese, To Be the Change: Finding Higher Ground in the Law, 50 *Maine L. Rev.* 11 (1998); Paula A. Franzese, Back to the Future: Reclaiming Our Noble Profession (Book Review of Linowitz & Mayer, *The Betrayed Profession*), 25

*Seton Hall L. Rev.* 488 (1994).

2. Lawyers provide fodder for commentators, comedians and pundits alike. A new book by Marc Galanter, *Lowering the Bar: Lawyer Jokes and Legal Culture* (2005), puts lawyer jokes into an historical perspective and concludes that they have become increasingly nastier and hostile over time. A reviewer observed: "Historically, lawyer jokes poked fun at lawyers, but did so with some sense of appreciation for their ability to be persuasive and eloquent at a moment's notice. Over the past few decades, however, they have become downright cruel." Kate Coscarelli, "A Man Walks Into a Bar Association...", *The Star Ledger* 25 (Oct. 11, 2005).
3. Examples of attrition in the legal profession abound.
4. Benjamin Sells has written poignantly about the feelings of depression, alienation, and loss of meaning experienced by many lawyers. Benjamin Sells, *The Soul of the Law* (1994).
5. Phillip van Munching, *Boys Will Put You on a Pedestal* (2004).
6. *Id.*
7. *Id.*
8. Goethe.
9. Nelson Mandela, inaugural address as president of the Republic of South Africa, 1994.
10. Maya Angelou wrote: "When all is said and done, people won't remember what you did or what you said. They will remember how you made them feel."

**Paula A. Franzese** is the Peter W. Rodino professor of law at Seton Hall Law School. Portions of this article are excerpted from her contributions to the new book *The Affective Assistance of Counsel: The Practice of Law as a Healing Profession* (M. Silver, ed., Carolina Academic Press, 2007), and are reprinted here with permission.

# *We and My Munditger*

BY VIRGINIA DRICK MESSING



In addition to her passion for restoring and playing theatre organs, Messing is co-chair of the Civil Practice Committee of the Morris County Bar Association. She single-handedly sets up the monthly schedule of attorneys who appear daily at the courthouse as mediators for the Morris County Special Civil Part and Small Claims Court. In all, there are about 75 attorneys who participate in this program, designed to assist the judiciary in managing the ever-increasing number of cases filed annually. Every member of the Morris County Civil Practice Committee is a volunteer mediator. On average, these mediators settle 70 percent of the cases listed for trial each month. This program is a model for similar programs being established in other counties.



I have been a New Jersey trial attorney for 40 years, and adore trying civil cases. I also adore listening to and playing theatre pipe organs. These are the organs that provided background music for the silent movies before, and for a few years after, the arrival of the talkies in 1927. Probably the most well known theatre organs are the mighty Wurlitzer in Radio City Music Hall in New York City and Wanamaker's classical organ in Philadelphia.

As a child I learned to play the piano. When I was in eighth grade, my father purchased a new Wurlitzer electronic organ for our home, and soon I was playing at pep rallies and high school graduation. My senior year in college, I utilized one elective to study the classical organ. During law school on Tuesday afternoons, I had access to a Methodist church pipe organ in Albany, changed the classical registrations to theatre registrations, and played for an hour.

Over the years, whenever I have access to an organ I sit down and play it. Today I play organs during open console sessions maintained by the Garden State Theatre Organ Society. At home I practice on a Knabe parlor grand piano. My husband restored the piano's reproducing mechanism in 1975, and Paul J. Troise, formerly with Steinway & Sons, tunes it.

Producing the sound—which is thrilling and shakes the whole building—is the most exciting aspect of playing a theatre pipe organ. Not only is it fun to sit at the console with multiple keyboards, with a pedal board, pistons, and pre-stops, but selecting the combination of sounds from the ranks of organ pipes is critical, and must be done seamlessly while playing.

Most of the theatre organs today are in public buildings, private homes, and some churches. There is a national organization, the American Theatre Organ Society (ATOS), whose members are dedicated to preserving and maintaining the theatre organ. Some members play, others just listen to or repair the organs. My husband and I are founding members of the local chapter, the Garden State Theatre Organ Society (GSTOS), which I incorporated as a nonprofit in New Jersey in 1972. GSTOS is dedicated to preserving and maintaining theatre organs, and to presenting theatre organ music. We are all volunteers who like the sound of the theatre organ, and we maintain the three-manual 16-rank Moller in the Trenton War Memorial. The term manual refers to a set of keys on the console. The term rank refers to a set of pipes with a common tonal character, such as strings or flutes.

GSTOS is currently reinstalling organs that are owned by the society: the four-manual 23-rank Wonder Morton at the historic Loew's Jersey City; the famous Rainbow Room Wurlitzer at the Rahway Senior Center; the three-manual eight-rank Wurlitzer in the Brook Arts Center in Bound Brook; and the three-manual four-rank Kilgen in the Mayfair Theatre in West New York. GSTOS sponsors concerts, silent movies, meetings, picnics, parties, dinners, and trips for our members and the public to experience the sound of the theatre organ.

As a theatre organ enthusiast, I am always looking for opportunities to listen to a theatre or pipe organ. Some of the great pipe organs I have heard include the Cavaille Coll Organ in Notre Dame in Paris; the Mormon Tabernacle Organ in Salt Lake City; the Aeolian Pipe Organ in Longwood Gardens; the Johannes Klais Orgelbau Memorial Concert Organ in Gray Chapel at Ohio Wesleyan University; the Skinner Organ in Rockefeller Chapel at the University of Chicago; and the Wurlitzer Theatre Organ at Radio City Music Hall. I also have a collection of CDs of theatre organ music featuring many other organs, which were acquired at the concerts or directly from the organist.

At the 2007 national ATOS convention, the July 3 concert featured Dan Bellomy playing the mighty 3/16 Moller, maintained by GSTOS at the Trenton War Memor-

ial. GSTOS underwrites the costs of maintenance and repair of this organ, and the state of New Jersey owns the building and organ. Photos of the Moller organ and the July 3 concert, plus upcoming concerts, can be viewed on our website, [www.gstos.org](http://www.gstos.org). Photos of many other organs and events from the ATOS 2007 convention also are posted on our website.

The mighty 3/16 Moller was built by the Moller Organ Company in Hagerstown, Maryland. It made its debut on April 23, 1928, at Trenton's Lincoln Theatre during the golden age of silent films. Long after the advent of sound movies the Moller continued to be an integral part of the Lincoln entertainment, up to the theatre's closing. Recognizing the value of the organ to Trenton and New Jersey's music lovers, in 1968, with the generous support of the National State Bank and the War Memorial Commission board, the organ was moved to the War Memorial's empty organ chambers. In 1974, GSTOS members started the restoration. For the next year and a half, volunteers rebuilt and reinstalled the instrument. In 1976, famed organist Ashley Miller performed at the dedication concert. For years Miller was the organist at the home games of the New York Knicks.

The Moller is a magnificent three-manual console with 16 ranks of pipes and all the wonderful sounds that comprise the theatre pipe organs. It includes more than 12,000 pipes, ranging from six inches to 16 feet, plus tuned percussions.

The Trenton War Memorial auditorium is known today as Patriots Theatre. Ground was broken in Trenton on July 17, 1930, for a memorial to the soldiers and sailors of World War I. In 1924, the Trenton mayor appointed a committee of citizens to plan a suitable tribute. The land was acquired by the state and private donations. The state and Mercer County funded the project. The complex included a large ballroom behind the main audito-

rium, with organ chambers in both locations. The auditorium chambers where the Moller organ now resides remained empty until its installation. The building was closed in 1994 for a \$35 million restoration, and was reopened on Jan. 12, 1999.

For five years the organ was silent, but now plays in the newly restored grand auditorium that seats 1,870. It features a proscenium stage 25 feet high, 50 feet wide and 27 feet deep. The enlarged orchestra pit accommodates 50 musicians and can be raised to stage level, increasing the available stage floor space. State-of-the-art lighting and sound systems are newly installed. From the elegant paneling to the rich marble and granite surfaces, and the sparkling brass appointments, this building is truly magnificent.

In Oct. 2006, Bob Ralston, organist from TV's weekly Lawrence Welk Show, presented an organ concert sponsored by GSTOS at the Patriots Theatre. The mighty Moller was tuned and ready for this grand public concert. In the dark auditorium the spotlight was on the Moller as the organ console and sound rose from the pit to stage level. During his concert Ralston utilized the extensive percussion section with its fire alarm, thunder, wind, gong, cymbal, bird call, steam boat/train whistle, telephone bell, snare drum, fiddle horn, siren, tom tom, castanets, slap stick, and Chinese block.

The most recent concert at the Patriots Theatre sponsored by GSTOS was in Oct. 2007, and featured organist Ron Rhode. Again the sound of the mighty Moller was heard, and the concert was fantastic!

There was much excitement the second week in July, when the Wonder Morton at Loew's Jersey Theatre came to life. While it will take time to shake down, regulate, and fine-tune the instrument, it is now closer than ever to becoming a performing theatre organ again!

The Robert Morton 'Wonder Morton' Theatre Pipe Organ that was installed in the Paradise Theatre on the Grand Con-

course in New York City in 1929 was an exact duplicate, except for some console decoration, of the one that was installed in the Loew's Jersey Theatre in Journal Square, Jersey City, in that same year. The theaters, dubbed 'Wonder Theaters' because of their size and beauty, were truly a wonder to behold, with the most magnificent opulent and elaborate ornamentation of any theaters in our area. No expense was spared on the buildings or the organs that graced these theaters.

When the Lowe's Jersey organ rose up on its lift and rotated around to reveal its white and gold-leaf wedding cake console, with the organist thundering out the opening song of the evening, it could do no less than put the audience in a musical trance as they watched the evening's entertainment unfold in front of them.

The Loew's Wonder Morton performed night after night at movie shows long after the rest of the area theaters had given up using their organs to cut costs. But with public support, the Loew's organ continued to entertain the movie-going public. Eventually, when the movie industry fell on really hard times and theaters started to close, the organ was removed, and the theatre eventually went dark. Happily, though, the original Loew's Jersey Wonder Morton survived, has been restored, and plays today at the Arlington Theatre, in Santa Barbara, California.

The same thing happened to the Paradise Theatre. When the theater went dark, the organ was removed and sent to Nova Scotia for a time, then to Detroit, and then finally to Chicago, where it was put into storage. When the Friends of Loews, a nonprofit group of volunteers, took over the shuttered Jersey City theater and started the renovation of the building; the late Bob Balfour, a dedicated member and co-founder of GSTOS, began to lobby the friends to let GSTOS install the Paradise organ at Loew's Jersey.

After a few years the deal was made,

and through the generosity of Bob Balfour, GSTOS was able to acquire the organ and bring it to Jersey City. It arrived in a large moving van on July 26, 1997, and was unloaded by GSTOS members and volunteers from friends. Then began the humongous task of designing the installation, rebuilding everything, and installing it in the theater. The organ came with no erecting lumber, so those materials had to be located in various theaters in New York and elsewhere, and customized for installation. Some of the pipes had to be straightened and repaired, and a few had to be made to replace those that were missing or broken beyond repair. The organ now has all the original ranks that came with it at the time of manufacture. Many of the ranks have the voicer's name on them, and all have the original Morton numbers the company assigned to them when the instrument was manufactured. There are no clandestine pipe ranks in this organ!

After thousands of hours of rebuilding and installing the instrument by our small dedicated GSTOS crew, on Saturday, July 14, 2007, almost 10 years to the day after the organ's arrival, the last piece of the new electronic relay was installed and the switch was thrown by crew chief Bob Martin. The organ came to life again in a Loew's Wonder Theatre, just as it was designed to do 78 years ago!

The organ, the soul of the theatre, already sounds beautiful, even in its infant stages of tuning and de-bugging. It will be tuned, voiced, and fully playing for its owners, the members of GSTOS, in the near future, with public concerts to be sponsored in 2008. ♪

**Virginia Drick Messing** is a certified civil trial attorney who opened her own law office in 2006 in West Orange. She has been a member of the Morris County Bar Association for over 25 years, and serves as co-chair of the Civil Practice Committee and as a member of the Judicial and Prose-cutorial Selection Committee.



# Lawyers Assistance Program LENDs A HELPING HAND

BY WILLIAM J. KANE

Times were simpler and gentler not too many years ago. Lawyers were few, travel was slower and the pace of life and practice was spared the immediacy of computers, faxes and cell phones. Photocopiers and devices screaming “now” replace quaint carbon paper and legal-size documents today!

**I**n those days the organized bar had a greater supportive and social function for lawyers’ personal and professional needs. Years ago bar association minutes abounded with notes of member attendance at memorial services and visits to ailing brethren of the legal community.



Along the way, many basic elements of daily life changed. Cozy neighborhoods no longer function as a support network. Our extended and nuclear families have been fragmented and disrupted by modern demands, vastly increased mobility and work schedules. Many natural supports relieving pressures of the work world have diminished or disappeared. These social gaps are partially met by assistance programs in the workplace and among the professions.

The quiet presence of New Jersey Lawyers Assistance Program (NJLAP) masks a remarkable helping hand. Most lawyers notice the program brochure accompanying the

annual registration and invoice. Several thousand other attorneys have a very personal recollection of NJLAP's help and support during a difficult time.

Established in 1993, NJLAP devotes many hours at many gatherings promulgating the message of our lawyer-specific, free and confidential help.<sup>1</sup> No longer an innovation, the program has a record of helping attorneys, law students and law graduates. Every attorney under age 40 has been sworn into the profession that included lawyers' assistance.

NJLAP's history from concept to creation was not a swift and seamless voyage. After a group of attorneys met with late Chief Justice Robert Wilentz in Oct. 1979, there were numerous proposals and studies. Questions of funding, staffing and confidentiality were pondered for 14 years. NJLAP was finally established through an agreement between the New Jersey Supreme Court and the New Jersey State Bar Association.

The original agreement limited scope of the program to alcohol and drug problems. That limited mandate then added compulsive gambling, and was soon expanded to a broad brush model, helping lawyers with any problem that would affect personal or professional wellbeing. The truth is that attorneys with *other* problems called LAP from the very first day. Callers were never turned away for not having a substance abuse problem.

Some lawyers continue to think that NJLAP is limited to substance abuse problems. This image issue is common, and a counterpart LAP in another state inserted a banner note on each brochure, "Not Just for Alcohol and Drugs!" Our own publicity and outreach emphasizes the broad brush or any problem emphasis. This message is especially important for attorneys and law students suffering from depression.<sup>2</sup>

We have a special brochure for

depression. "It ain't just the blues" is one heading, followed by a listing of common symptoms. NJLAP counselors interview and provide an initial screening. Clients in need are referred to a physician, and, when treatment is underway, NJLAP has a special support group meeting for depressed attorneys. The groups are a supplement, never a substitute, for primary care.

Today's NJLAP staff includes two spe-

cially trained and experienced attorneys and several clinicians who are licensed and state-certified counselors. Each staff member is devoted to the mission of assisting attorneys, law students and law graduates with a sensitivity and special understanding of the profession.

The program is totally voluntary. Attorneys may be urged to seek NJLAP services by a colleague or family member, but the program has no authority or

## Signs & Symptoms of Depression

- Inability to meet professional or personal obligations—procrastination, file stagnation and neglect, lowered productivity, missing deadlines (statutes, filing responsive pleadings or motions,) excuse making and potential for misrepresentation to clients
- Emotional paralysis—unable to open mail or answer phones
- Persistent sadness or apathy, crying, anxiety, empty feeling
- Loss of interest or pleasure
- Trouble concentrating or remembering things
- Guilt, feelings of hopelessness, helplessness, worthlessness, low self-esteem
- Changes in sexual energy or desire
- Changes in eating, including loss of or significant increase in appetite
- Changes in sleep, marked increases or decreases in time spent sleeping
- Feelings of bafflement, confusion, loneliness, isolation, desolation, being overwhelmed, unavailable to what is going on around you
- Thoughts of suicide, planning suicide or suicide attempts

Colleagues, family members and friends play important roles in recognition of depressive symptoms and helping those in need get treatment. If you are experiencing symptoms of depression, or know a judge, lawyer, law student or law school graduate who is in need of help, call NJLAP for a free and confidential consultation at 1-800-24-NJLAP or 1-800-246-5527.

## The Facts About Depression

- Women are twice as likely to be diagnosed and treated for major depression; while men are less willing to acknowledge depression and may mask symptoms with alcohol or drug abuse.
- Depression is the leading cause of disability in the U.S., affecting about 10 percent of the population (19 million people a year).
- Two thirds of those with depression never seek treatment, and suffer needlessly.
- More than 80 percent of people with a depressive illness improve with appropriate treatment.



mandate compelling participation. When an attorney calls for help, we answer the phone with a smile. Often the caller has struggled with the decision to call, and we admire that courage. Some callers tell us they have wrestled with the “should I call?” issue for years before picking up the phone.

The program assists a lawyer in need by identifying the problem and then offering a helpful plan. The program will offer suggestions based on the most convenient, effective and economical resources. NJLAP counselors have located resources that are lawyer friendly and understanding of the profession. We also have established several special support groups for men and women attorneys. The statewide network of Lawyers Concerned for Lawyers meetings supports all attorneys in recovery from chemical dependency.

Websites [www.njlap.com](http://www.njlap.com) and [www.confidentialhelp.org](http://www.confidentialhelp.org) offer detailed information and education about personal and professional problems affecting lawyers. NJLAP offers free evaluations to bar candidates, and offers a four-week course of education and techniques to reinforce healthy lifestyles.

NJLAP staff welcome the opportunity to deliver materials or a personal message to bar groups at the county or statewide levels. Annually, NJLAP takes

time to address the professional responsibility sessions of ICLE’s Skills and Methods classes. This is a precious opportunity to deliver a brochure and to speak to each new attorney, including out-of-state law school graduates. After explaining the scope of NJLAP services, and emphasizing the free and totally confidential nature of our work, we leave them with the message, “It may be that no lawyer in this room will ever need to call New Jersey Lawyers Assistance, but EVERY lawyer in this room will know someone who needs to call Lawyers Assistance.” ∆

#### Endnotes

1. 1:28B-3. Confidentiality. The records, documents, and meetings of LAP and the board of trustees are confidential, with the following exceptions: (a) Annual audit reports; (b) Annual reports of the board of trustees to the Supreme Court; (c) Quarterly reports to the board of trustees from the LAP director; and (d) All materials relating to the budget process that do not identify clients of the program or otherwise disclose information that would compromise the confidentiality of the program as detailed in regulations adopted by the board of trustees and approved

by the Supreme Court. In no event, however, shall the identity of program clients be disclosed in the above reports. Note: Adopted July 15, 1999, to be effective Sept. 1, 1999.

2. According to a Johns Hopkins study, attorneys suffer from depression at much higher rates than the general public. Depression is not a character flaw. It is neither a mood, nor a personal weakness that you can change at will or by pulling yourself together. Rather, it is a real medical illness with real causes, just as diabetes and high blood pressure are. More than 19 million Americans suffer from some type of depression, and one in eight people will need treatment for depression during his or her lifetime.

**William John Kane** is the director of the NJLAP. Since 1981, he has served on adjunct faculty for the Rutgers Center of Alcohol Studies teaching “Alcoholism and the Law” and “Counseling the Professional Client.” Kane was among the nation’s first certified employee assistance professionals, and is a certified social worker. He implemented the first employee assistance program for several national corporations, and serves as a consultant on clinical and legal issues with a specialty in confidentiality laws and regulations.

## LEGISLATIVE CORNER

### The Nine Principles of Carnegie

by Valerie Brown

**W**e are all too familiar with the horror stories: rising billable hour requirements and litigation costs, increasing competition for clients, declining civility within the bar. Lawyers begin their career path full of bright hope, promise and potential.

When we start out we may have altruistic ideals of public service, embrace the intellectual challenge of appellate oral argument and strive for the drama of a high-stakes trial. We may become seduced by six-figure salaries or the prestige of working with New Jersey's top corporations. We all know that the path to happiness can be riddled with unexpected potholes and detours. Somehow, however, along the way many lawyers become disillusioned by the relentless pace of legal practice and staggering workloads. We must work together to restore our enthusiasm.

In the recent Pulse of the Profession survey commissioned by the American Bar Association (ABA), 800 lawyers were interviewed nationwide. The results depict a good-news/bad-news picture of lawyer satisfaction. The survey revealed that 68 percent of public-sector attorneys reported being "satisfied with my career," while only 44 percent of attorneys in "big firms" (those employing 101 lawyers or more) could say the same. A total of 53 percent of sole practitioners reported being satisfied with their careers. "Freedom, say many solos, is the reason behind that result."<sup>1</sup>

The statistics appear to worsen with an attorney's number of years in the profession. According to the ABA survey, only 42 percent of lawyers who have been in practice 10 years or more said they would recommend a legal career to a young person.<sup>2</sup> Comparatively, 57 percent of those in practice less than three years said they would make that recommendation.<sup>3</sup>

Citing research on educational policy and the economics of the legal professions, the ABA reports that, "dissatisfaction may come from law schools not fully informing students about the profession's demands."<sup>4</sup>

Lawyers enter the profession with high expectations, believing a legal degree will give them increased career mobility, flexibility and prestige. Often, they come face-to-face with the reality of balancing life and the law.

So how can we maintain a balanced, wholesome, professional career in the face of such sobering statistics?

As a lobbyist representing lawyers, I return for guidance to the first book I read about human relations—Dale Carnegie's seminal work *How to Win Friends and Influence People*, which has sold over 30 million copies. Whether you practice in a large, medium or small firm, you are a seasoned partner or new associate, a lawyer-wanna-be or re-entering the workforce after an extended hiatus, Carnegie's principles of successful human relations are instructive and can help restore civility to lawyers' professional and personal satisfaction.

Carnegie reminds us to return to the basics of human interaction—showing genuine interest in others, being a good listener, remembering names. While these "basics" may seem elementary, they speak to deep human instinct to live fully in work, at home or in leisure. Carnegie's principles can guide and direct us.<sup>5</sup>

**Principle 1:** Begin with praise and honest appreciation.

**Principle 2:** Call attention to people's mistakes indirectly.

**Principle 3:** Talk about your own mistakes before criticizing the other person.

**Principle 4:** Ask questions instead of giving direct orders.

**Principle 5:** Let the other person save face.

**Principle 6:** Praise the slightest improvement and praise every improvement. Be "hearty in your approbation and lavish in your praise."

**Principle 7:** Give the other person a fine reputation to live up to.

**Principle 8:** Use encouragement. Make the fault seem easy to correct.

**Principle 9:** Make the other person happy about doing the thing you suggest. ☪

#### Endnotes

1. American Bar Association, "Pulse of the Profession," *ABA Journal*, Oct. 2007 at p. 34.
2. *Id.* at 33.
3. *Id.*
4. *Id.*
5. Dale Carnegie, *How to Win Friends and Influence People*, Dale Carnegie & Associates, Inc., 1936 at p. 274-75.

**Valerie Brown** is the New Jersey State Bar Association's legislative counsel.

# LAWYER'S BOOKSHELF

## **Raise the Bar: Real World Solutions for a Troubled Profession**

**Lawrence J. Fox, editor**

ABA Publishing, 2007

Rarely will you come across a book that delves as deeply into the personal concerns surrounding the problems that plague the legal profession as does *Raise the Bar: Real World Solutions for a Troubled Profession*. This 299-page volume, filled with compelling personal accounts and realistic solutions to what appears to be a growing unhappiness among members of the profession, is the culmination of a fascinating study conducted by the American Bar Association Section of Litigation. But rather than simply regurgitate their findings, the ABA turned the study's sobering results into an opportunity for the profession to undergo a kind of psychoanalysis through the personal accounts of more than a dozen contributors.

This softbound volume is hard to categorize: It's not your typical analytical book that painstakingly assesses the problem and leaves the reader in a deeper funk, certain now that the situation has been dissected from every conceivable angle there can't possibly be a solution. And it's not a feel-good inspirational book filled with cute little catch phrases perfect for chanting when times get tough. Instead, *Raise the Bar* turns to legal professionals themselves, and offers each the space to speak out, to tell the reader what's really on his or her mind, offering both criticism and hope.

Contributions are organized into seven categories, titled: The Billable Hour, The Law Firm, Being Honest, The Work, Associates and Mentoring, Serving the Wider World and The Valediction. Each category contains between two and five chapters, each written by a different contributor. As the book's introduction explains, "The essays in this book, by some of the most thoughtful lawyers working today, explore the gap between aspiration and experience." Opening with a chapter by Scott Turow, the list of contributors includes Roland Baggett, Cynthia Thomas Calvert, Scott Cawood, Bruce D. Collins, Stephen Daniels, Lawrence J. Fox, Robert Grey Jr., Natalie Hiott-Levine, Kay H. Hodge, Louise A. LaMothe, Joanne Martin, Robert Nelson, Robert N. Sayler, Coke Morgan Stewart, Michael E. Tigar, Michael H. Trotter, and Dean Zipser.

As Brad D. Brian, chair of the litigation section, writes in the book's foreword: "We decided to become lawyers because of the allure of other ideas and ideals: justice, fairness, equal-

ity, opportunity, service. We liked the idea of helping or championing a person, case, an idea...The essays in this book suggest that, if we give these defining ideas a place in the shaping of our careers, we could be a happier and more justly admirable lot."

Those who spend some time reading *Raise the Bar*, will likely find more than a grain of truth in Brian's words.

**Reviewed by Cheryl Baisden**

## **The Creative Lawyer: A Practical Guide to Authentic Professional Satisfaction**

**Michael F. Melcher**

ABA Publishing, 2007

This new self-help book for lawyers, released by ABA Publishing, is billed as a practical, entertaining and inspirational guide to building and maintaining a life that is personally and professionally satisfying. While that goal may seem rather lofty, author Michael F. Melcher pulls it off effortlessly.

According to *The Creative Lawyer: A Practical Guide to Authentic Professional Satisfaction*, lawyers are the highest paid professionals in America, yet have the lowest job satisfaction of any profession. Specifically, they have limited ideas about how to manage, improve or change their careers. That's where this 180-page volume comes in. Written by an attorney who is also one of the nation's top career coaches, the book guides lawyers (and anyone else in the workplace, for that matter) in designing a path toward an optimal career and life.

The book covers everything from identifying individual values and interests to defining one's vision and developing a plan to turn that vision into a reality. The easy-to-read book includes inspirational advice, memorable examples and thought-provoking exercises to help readers examine their personal values, and then compare those values to actual job requirements. This information can then be used to create a personal fulfillment plan, with specific steps that can be taken to reach clearly established goals.

*The Creative Lawyer* provides practical tools to help readers be more effective on the job, adapt to changing circumstances and build a personal image brand. Additionally, it includes the tools needed to deal effectively with career transitions, whether that means switching jobs or switching careers.

A quick read through the book is recommended first, fol-

lowed by a careful review, page by page, to truly absorb the author's wisdom and respond honestly to each exercise. Using this book as a guide, readers will gain considerable insight into both their professional and their personal lives. And after showing readers how to fully evaluate the experiences, interests and ambitions that set them apart from the crowd, Melcher leaves each one with a plan for a more satisfying life on all fronts.

**Reviewed by Cheryl Baisden**

## **New Jersey Appellate Practice**

**Jeffrey S. Mandel**

Gann Law Books, 2007

Gann Law Books has another winner on its hands with *New Jersey Appellate Practice* by Jeffrey S. Mandel. The book is well-organized in the standard format we have become accustomed to from other Gann Law publications. It is also comprehensive in both scope and detail.

Regarding its scope, in addition to the topics you would expect to find in such a book, it also covers such diverse subjects as the history and operation of the Supreme Court and the Appellate Division, and ethical issues in appeals. Regarding its detail, when addressing mootness, for example, Mandel explains the issues in depth, and then summarizes numerous specific cases—organized by subject matter—applying the general rule and the exceptions to the general rule. I found the discussions on the interest of justice standard for interlocutory appeals and the grounds for certification to be particularly informative.

Mandel has the knowledge and experience to give the reader confidence in the reliability of the book. Practicing civil litigation, criminal defense and appeals with the law firm of Day Pitney, he was one of the editors of the seventh edition of the *New Jersey Appellate Practice Handbook*, published by the Institute for Continuing Legal Education. He

served a judicial clerkship with a judge in the Appellate Division, and has taught appellate advocacy at both Seton Hall Law School and Rutgers Law School.

The book contains 815 pages of text, a 115-page appendix, and a comprehensive index, bringing the volume's total page count to 976. It does not contain a table of court rules cited in the book; however, this small blemish can be remedied by searching the text online at Gann's website.

*New Jersey Appellate Practice* is an outstanding addition to Gann's collection of authoritative texts. The book should be a very appealing purchase for attorneys involved in civil litigation, criminal defense, and appellate practice.

**Reviewed by Gianfranco A. Pietrafesa**  
Lindabury, McCormick, Estabrook & Cooper, P.C.

## **Intellectual Property Deskbook for the Business Lawyer**

**ABA Section of Business Law,  
Committee on Intellectual Property**  
ABA, 2007

Imagine a great day—three new clients call you. The first client says he is leaving his software developing job to start a new company. You want to make sure he is not infringing his former employer's intellectual property (IP) rights, such as copyrights and trademarks, so you pick up the *Intellectual Property Deskbook for the Business Lawyer* and review the chapters on employment and start-up companies. Another client wants to borrow money from a bank to purchase a significant amount of software. You grab the deskbook and review the chapters on software financing and security interests. The third client will be acquiring a competitor with significant IP assets. You again consult the deskbook, this time reviewing the chapters on due diligence and representations and warranties.

As these examples show, the *Intellectual Property Deskbook* is a handy little

book for the business lawyer dealing with IP issues, covering a wide variety of topics. In addition to those above, it also covers IP issues in bankruptcy, estate planning, outsourcing, and open-source software.

The deskbook will help a business lawyer, or general practitioner, get up to speed on IP issues in a variety of circumstances so they can intelligently discuss them with clients as well as IP counsel. It can also be used as a springboard to other legal resources, which are cited both in the footnotes and the bibliography. ⚖️

**Reviewed by Gianfranco A. Pietrafesa**  
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# ATTORNEY ETHICS

## Office of Attorney Ethics—Disciplinary Summary

The following regular feature includes summaries of actual ethics cases provided by the Office of Attorney Ethics.

### Securing Releases from Ethics Charges—RPC 8.4(d) Conduct Prejudicial to the Administration of Justice

***In re Wallace*, 104 N.J. 589 (1986)** (*Six-Month Suspension*). The attorney grossly neglected a matter, failed to maintain adequate records, and entered into an agreement with unrepresented grievants and paid them \$3,000 to withdraw ethical charges already filed. In an unpublished decision, the Disciplinary Review Board condemned the conduct and recommended a six-month suspension from practice, holding that the “(r)espondent’s attempt to thwart an ethics investigation and limit his liability for malpractice must be severely condemned.” The Supreme Court agreed, stating that “(p)ublic confidence in the legal profession would be seriously undermined if we were to permit an attorney to avoid discipline by purchasing the silence of complainants.” The respondent was suspended for a term of six months.

***In re Saypol*, 142 N.J. 556 (1995)** (*Reprimand*). The attorney received a public reprimand where, during the course of an ethics matter that was pending against him, he persuaded the grievant to sign a document purporting to release the respondent from all ethics charges against him.

***In re Silber*, 139 N.J. 605 (1995)** (*Reprimand*). The respondent was publicly reprimanded for improperly communicating with a party he knew to be represented by counsel, as well as conduct prejudicial to the administration of justice. In the latter regard, the respondent drafted a release that attempted to insulate him from any disciplinary proceedings. The release covered “any civil or criminal right, claim or action, as well as any ethics or disciplinary right, claim or action...” The attorney’s assertion that the party’s attorney did not object to the language in the release was held not in any way to absolve him of his unethical wrongdoing.

***In re Mella*, 153 N.J. 35 (1998)** (*Reprimand*). The Court imposed a public reprimand for conduct that was prejudicial to the administration of justice. The attorney had mishandled a lawsuit and was subject to a malpractice suit. The client had filed an ethics grievance concerning the attorney’s unethical conduct in that same matter. During that process, the respondent negotiated a settlement of the malpractice claim directly with the client. He drafted a settlement agreement calling for the payment of \$12,500. The agreement also was designed to prevent the grievant from testifying in the ethics proceeding. ☞

## Internal Controls: Who's Minding Your Store?

by Timothy O'Connell

**I**t is estimated that more than \$600 billion is stolen each year through fraud and theft, sometimes by nice little old ladies you would never suspect of such an act. The following story emphasizes the importance of a good system of internal controls.

A nice grandmother who worked in a small lighting store was a long-time, trusted and valued employee. She handled the store's accounting, bookkeeping and banking, including making deposits, signing checks and reconciling the bank account. In her position, she had many opportunities to steal from her company, but she never took a dime, until one day, after working at the store for over 10 years, she started. Once she started, she found she couldn't stop. She ultimately ended up stealing over \$416,000. Here is how she did it: She would write a company check to herself and record it as voided. The next time she paid a vendor, she would add the amount she stole to the amount she recorded as the vendor payment. Doing this kept the account in balance. When the bank statement would come in with the canceled checks, she would destroy the one she wrote to herself. She was never caught. Eventually, her conscience would not let her continue, and she turned herself in.

The term "internal controls" refers to steps that may be taken to safeguard the assets of a firm and ensure the accuracy of accounting records. The goal is to safeguard the firm's assets from theft and robbery (internal and external), as well as from unauthorized use. The accuracy and reliability of accounting records is improved by reducing the risk of errors and irregularities. Errors are unintentional mistakes and irregularities are intentional misrepresentations.

There are six basic principles of internal control:

- Establishment of responsibility
- Segregation of duties
- Documentation procedures
- Physical, mechanical and electronic controls
- Independent internal verification
- Other controls

Before exploring these principles in detail, it is important to design a system of internal controls with the concept of reason-

able assurance in mind. This means controls should not cost more than the expected benefit. There is no need to hire an additional person (at \$40,000 plus benefits) to check for billing errors if it's estimated that only about \$10,000 in billing errors might be prevented. However, bills over a certain amount should be spot checked to ensure they were proper and complete. This limited review may be done by someone who has other full-time responsibilities. In this way, the cost would be minor and the anticipated benefit could be most of the \$10,000 that would be lost. Each of the following principles should be addressed with the concept of reasonable assurance in mind.

**Establishment of Responsibility.** This principle requires the assignment of a task to a specific person. What would happen if no one in particular was responsible to make the daily bank deposit, mail the client invoices or lock the door at the end of the day? It is likely that most days someone who knew these things had to be done would do them. It is just as likely that some days these things would not get done, because they are not anyone's responsibility.

Anything that needs to be done should be the responsibility of a specific person. The purpose of this principle is to ensure that each necessary procedure is done, to be able to trace a problem back to the person who made the error or caused the irregularity and to encourage a level of expertise and efficiency in the operation. For example, if the bank deposit was supposed to be prepared by the bookkeeper and brought to the bank by anyone in the administration department who might be going that way, what would happen? Because the task is not someone's specific responsibility, there may be times when the deposit sits around for days because no one is going toward the bank, or the weather is bad, or everyone is busy because of the holidays. What happens when a deposit is lost or stolen? Who was supposed to take it? What happened to it? Where do we even start to look? There is no way of knowing, because it was not someone's responsibility.

**Segregation of Duties.** The next principle requires that one person should not be responsible for every step of a process. No one should be in the position to authorize, approve and record a transaction. Take the stock room for example. A good system of internal controls would not allow the same person to order supplies, receive the supplies, approve invoices and pay the ven-

dors. Ideally, one person is responsible for keeping the supply room stocked. When something is required, that person would requisition the item, and another person would place an order with the appropriate vendor. A third person would receive the order and document the quantity received. The order, the receiving documents and vendor invoice would be compared by an unrelated party so the payment can be processed. Payment would be approved by someone unrelated to any of the previous steps, and the bank reconciliation would be prepared by another unrelated party. This process would ensure that items ordered were needed, the correct price was paid to the correct vendor, and that the firm paid for what was received.

The problem with the system described above is that it would take six people to order a box of pencils! So what often happens is that the person who maintains the supplies also orders the supplies, receives the supplies and approves the invoice. In a small firm, there may be few options, but the process should be reviewed in an effort to get to the ideal process. There is usually someone who can be added into the process to ensure there is no one person in a position to initiate, approve and record a transaction. In a smaller organization, that means someone whose full-time responsibility is in one area may be responsible for approving or recording transactions in another area.

**Documentation Procedures.** This principle usually refers to the system a company uses to document the ordering, receipt and payment of goods or services purchased, and/or the documentation of the purchase and payment for goods or services delivered or rendered. Are the firm's purchases properly documented and approved? Many people may be happy to order things the firm needs, but there may be a reluctance to sign off or approve purchases in any formal way. In our industry, there seems to be a reluctance to approve a specific purchase. Instead of an

"ok to pay" with initials and a date, the person's name may be written on the envelope, which we have come to accept as meaning, "Here's a bill. Pay it."

This is clearly a weakness, because whether the bill is being sent by a person in a position to verify that the goods/services were received and invoiced at the agreed-upon rate, or the bill is being sent because the recipient has no idea of what it is all about and wants you to investigate, the documentation is often the same. Every firm must ask the following question: Are all transactions adequately documented from requisition to payment?

There is probably room for improvement in all firms in this area.

**Physical, Mechanical and Electronic Controls.** Whether it is a lock on the door, a surveillance system, keeping the petty cash secure at night, passwords on the computer, etc., every company has potential controls. These controls should be evaluated periodically to see if there are any weaknesses.

Some firms provide a wireless Internet connection for their clients. Others provide a wireless Internet connection that is separate from their network. This satisfies the client's need, and provides security for the network. Are the security features available from the online banking software being used to their full ability, or are they circumvented for ease of use? Is the check stock in a locked cabinet or in a box under the printer?

**Independent Internal Verification.** This principle requires that someone independent of the process review transactions for propriety. Firms should periodically review their records. An employee who is unrelated to the process should review the process, and any discrepancies and exceptions, errors or omissions should be reported to someone in management in a position to take action to fix the problem. Periodic spot checks by someone outside the department can bring to light basic flaws in how things are being done.

Often the questions of an unrelated

party get a professional to look at things in a different way. One does not have to be an expert to call attention to a basic flaw in someone else's process. Don't forget that Noah's ark was built by an amateur, and the Titanic was built by a professional. And even if the person reviewing transactions is not in a position to suggest improvements, just the fact that he or she is going to spot-check transactions will improve the performance of the people processing them.

**Other Controls.** This catch-all principle usually refers to all the other things that are done to compensate for weaknesses in other areas, or provide a level of confidence and make the other principles work better. For example, a company may perform background checks for new employees, drug screening, hire relatives or friends of the family, require vacations, rotate tasks, or take other steps that will enhance the system of internal control.

## Conclusion

These six principles are basic to the system of internal controls for all companies. All industries use them to develop systems to safeguard their assets and improve the accuracy and reliability of their accounting records. Law firms may have developed processes and procedures that are inherently weak in certain areas. This may be because of size, proximity to the attorneys and partners, familiarity within the organization, time restraints, lack of staff, productivity expectations or any number of reasons that prevent the implementation of good control procedures. All that is required is a review of the basics, and the control procedures can be tightened and a layer of protection for the firm can be added, with little or no additional cost. ☺

*Timothy O'Connell is the director of finance at Saiber, Schlesinger, Satz & Goldstein in Newark. This article was initially published in the Spring 2007 edition of the Jer-Z-Journal, the award-winning publication of the New Jersey Association of Legal Administrators (NJALA), and is reprinted with permission.*



# Statement of Ownership, Management, and Circulation (All Periodicals Publications Except Requester Publications)

1. Publication Title <i>New Jersey Lawyer Magazine</i>	2. Publication Number <table border="1" style="width: 100%; text-align: center; border-collapse: collapse;"> <tr> <td style="width: 12.5%;">0</td> <td style="width: 12.5%;">1</td> <td style="width: 12.5%;">9</td> <td style="width: 12.5%;">5</td> <td style="width: 12.5%;">-</td> <td style="width: 12.5%;">0</td> <td style="width: 12.5%;">9</td> <td style="width: 12.5%;">8</td> <td style="width: 12.5%;">3</td> </tr> </table>	0	1	9	5	-	0	9	8	3	3. Filing Date <i>9/28/07</i>
0	1	9	5	-	0	9	8	3			
4. Issue Frequency <i>Bi-monthly</i>	5. Number of Issues Published Annually <i>6</i>	6. Annual Subscription Price <i>\$60</i>									
7. Complete Mailing Address of Known Office of Publication (Not printer) (Street, city, county, state, and ZIP+4®) <i>One Constitution Square New Brunswick, NJ 08901-1520</i>		Contact Person <i>Cheryl Baisden</i> Telephone (Include area code) <i>732-937-7521</i>									

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*Cheryl Baisden  
One Constitution Square  
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The purpose, function, and nonprofit status of this organization and the exempt status for federal income tax purposes:

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14. Issue Date for Circulation Data Below  
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15. Extent and Nature of Circulation

	Average No. Copies Each Issue During Preceding 12 Months	No. Copies of Single Issue Published Nearest to Filing Date
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a. Total Number of Copies (Net press run)	<i>16,633</i>	<i>16,700</i>
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b. Paid Circulation (By Mail and Outside the Mail)	(1) Mailed Outside-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	<i>15,916</i>	<i>16,207</i>
	(2) Mailed In-County Paid Subscriptions Stated on PS Form 3541 (Include paid distribution above nominal rate, advertiser's proof copies, and exchange copies)	<i>—</i>	<i>—</i>
	(3) Paid Distribution Outside the Mails Including Sales Through Dealers and Carriers, Street Vendors, Counter Sales, and Other Paid Distribution Outside USPS®	<i>—</i>	<i>—</i>
	(4) Paid Distribution by Other Classes of Mail Through the USPS (e.g. First-Class Mail®)	<i>85</i>	<i>115</i>

c. Total Paid Distribution (Sum of 15b (1), (2), (3), and (4))	<i>16,001</i>	<i>16,322</i>
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d. Free or Nominal Rate Distribution (By Mail and Outside the Mail)	(1) Free or Nominal Rate Outside-County Copies included on PS Form 3541	<i>—</i>	<i>—</i>
	(2) Free or Nominal Rate In-County Copies Included on PS Form 3541	<i>—</i>	<i>—</i>
	(3) Free or Nominal Rate Copies Mailed at Other Classes Through the USPS (e.g. First-Class Mail)	<i>112</i>	<i>22</i>
	(4) Free or Nominal Rate Distribution Outside the Mail (Carriers or other means)	<i>215</i>	<i>45</i>

e. Total Free or Nominal Rate Distribution (Sum of 15d (1), (2), (3) and (4))	<i>327</i>	<i>67</i>
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f. Total Distribution (Sum of 15c and 15e)	<i>16,328</i>	<i>16,389</i>
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g. Copies not Distributed (See Instructions to Publishers #4 (page #3))	<i>305</i>	<i>311</i>
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h. Total (Sum of 15f and g)	<i>16,633</i>	<i>16,700</i>
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i. Percent Paid (15c divided by 15f times 100)	<i>98%</i>	<i>99%</i>
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16. Publication of Statement of Ownership

If the publication is a general publication, publication of this statement is required. Will be printed in the *December 2007* issue of this publication.

Publication not required.

17. Signature and Title of Editor, Publisher, Business Manager, or Owner <i>Cheryl Baradon, managing Editor</i>	Date <i>9/28/07</i>
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## LEGAL ARTS



Palm trees against the Warner Brothers Building, Burbank, CA

Photo by Gianfranco Pietrafesa