



Messenger

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2017-18
MBA Officers



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Make Your Voice Heard

Send your articles, editorials, or stories to mflores@milwbar.org. We also have seats available on the *Messenger* Committee.



We look forward to hearing from you! The *MBA Messenger* is published quarterly by the Milwaukee Bar Association, Inc., 424 East Wells Street, Milwaukee, WI 53202. Telephone: 414-274-6760
E-mail: mflores@milwbar.org

The opinions stated herein are not necessarily those of the Milwaukee Bar Association, Inc., or any of its directors, officers, or employees. The information presented in this publication should not be construed as formal legal advice or the formation of a lawyer-client relationship. All manuscripts submitted will be reviewed for possible publication. The editors reserve the right to edit all material for style and length.

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Charlie Barr, *Editor*

So many things seem to come naturally to people around me, but not to me. Hitting a baseball comes to mind. I go to the batting cage every day. I see okay and know where the strike zone is. Yet, I swear my bat swings itself at pitches in the dirt. On the plus side, I don't spend a lot on bats, which tend not to break when they miss the ball.

Or take the practice of law—please. I've swung at my share of pitches out of the zone there, too. Sure, I've hit a gapper now and then. (See “stopped clock”; “blind squirrel.”) All things considered, however, I was looking forward to retirement. My ex-law partner, for example, had a real estate practice. One day he just stuck a nice notice up on his website announcing his retirement, thank you. And then he retired. Just like that. Seems pretty content with it, too. I thought maybe retirement would come as naturally to me as it did to him. Alas.

As a litigator, it wasn't quite as simple for me. I referred away most of my cases, but timing, subject matter, or relationships dictated that I complete the rest. The process calls for more than a little patience. Several years later, I still wasn't at the finish line.

In the meantime, my wife decided to leave her megafirm and start her own law firm, at age 63. Really? Yes, really. Like everything else she does, it's a smashing success. (She's one of *those*.) It generates a lot of work. How could I not pitch in? Inevitably, irresistibly, I find myself more and more involved in—you guessed it—the practice of law.

So, no, retirement hasn't come naturally to me. It hasn't come at all, notwithstanding the red, white, and blue card in my wallet. Permit me to channel Michael Corleone in *The Godfather Part III*: “Just when I thought I was out, they pull me back in!” They'll say of me that I went down swinging.

Please do take a swing at the *Messenger's* summer edition. You can't miss. Paul Stenzel profiles the Milwaukee family court commissioners. Jim Santelle marks the fifth anniversary of the Sikh temple hate crimes in Oak Creek. Doug Frazer chips in with a primer on Wisconsin's open meeting law. We report Professor Erwin Chemerinsky's keynote address on the U.S. Supreme Court at the Eastern District of Wisconsin Bar Association's

annual meeting. Kyla Motz, Legal Director of the Milwaukee Justice Center, updates us on the ABA's 2017 Equal Justice Conference.

Our illustrious panel of judges explains its choice for the annual *Messenger* award: Sheridan Ryan's article on “zero tolerance” policies for violence in healthcare settings. Jim Clark reviews the new edition of *Business and Commercial Litigation in Federal Courts*. Adrienne Ehrhardt and Joel Henry tell us what we need to know about WannaCry, 2017's biggest cyberattack to date. We hear from Seth Mailhot, Paulette Mara, and Lea Hurtgen Ziemba about Washington's reversal of direction on the FDA's voluntary dietary sodium reduction program.

We have photos and wrap-ups from the MBA's Annual Meeting at Miller Park and the Milwaukee Justice Center's 5K Run for Justice. We announce the winner of the Annual Evans Writing Competition, sponsored by the Eastern District of Wisconsin Bar Association, with a link to the winning entry. Fran Deisinger reviews the 1949 legal comedy classic *Adam's Rib*, starring Katherine Hepburn and Spencer Tracy. The inimitable Bill Jennaro steps into the Volunteer Spotlight.

And we have a short story: “The Visitor,” by Lawrence Savell. Mr. Savell, who practices law in the Big Apple, had to remind me that the *Messenger* published another story of his in 2004. We'd like not to wait 13 years for the next law-themed (however loosely) short story, serial, or poem. Day in and day out, we deal with non-fiction, much of it mundane and almost all of it conflict-ridden. When we find fiction, we blow it up. Legitimate fiction—as an art form—helps keep us, as Rocky Balboa would put it, from getting “mentally irregular.” Even though the word “creative” is more often pejorative than complimentary in our profession (I've never understood that), my gut tells me creative writers are lurking among our membership, just waiting to bust out of their workaday legal straightjackets.

We hope you enjoy this edition of the *Messenger*, along with long-awaited summer, which in Wisconsin is as near to perfection as it gets on planet Earth. We hope also that you take a swing at contributing to our humble publication, whether with fiction or the other stuff. Just write what comes naturally to you.

—C.B.

Member News



Kathryn A. Keppel

Gimbel, Reilly, Guerin & Brown announced **Kathryn A. Keppel** as the recipient of the Bishop John Paul Distinguished Alumnus Award by Aquinas Catholic Schools. This annual award is presented to a graduate of Aquinas who actively practices the Catholic faith, exhibits significant achievement in his or her chosen field, and demonstrates support for Aquinas Catholic Schools.

The firm also congratulated **Max T. Stephenson** upon becoming president-elect and **Russell J. Karnes** upon becoming a board member of the Milwaukee Young Lawyers Association. MYLA is an organization for attorneys 37 years or younger, and those who have been practicing law for five years or less.



Max T. Stephenson



Russell J. Karnes



Michael J. Ostermeyer



Karen DaCosta Perzan

Polsinelli welcomed two new shareholders to the firm's Real Estate Practice in Chicago. **Michael J. Ostermeyer** focuses his practice on guiding public development and public infrastructure projects, and on developing commercial, institutional, and industrial realty.

Karen DaCosta Perzan represents clients in a range of matters, including property acquisitions and dispositions, tax-assisted development, real estate finance, commercial leasing arrangements, and zoning issues.



Timothy A. Nettesheim

von Briesen & Roper announced that **Timothy A. Nettesheim** has become a shareholder of the firm. Nettesheim will lead the firm's new Capital Markets Section, assisting businesses and their owners in mergers and acquisitions, restructurings, valuation, capital raises, and other commercial and business matters.

The firm also announced that **Randy S. Nelson** has been certified as an Accredited Estate Planner® designee by the National Association of Estate Planners & Councils (NAEPC). The certification is awarded by the NAEPC to recognize estate planning professionals who meet stringent requirements of experience, knowledge, education, professional reputation, and character.



Randy S. Nelson

Volunteer Spotlight



Judge William A. Jennaro

When asked to describe himself, Bill Jennaro responds, "My life has been a series of conflicts." He is and has been a weaver of stories, mediator of messes, and advocate for the oppressed. With more than 40 years of legal service to the Milwaukee community, Bill continues to volunteer on the MBA Golf Committee and through a variety of other board positions with other nonprofits.

Bill grew up in the vibrant Italian neighborhood of Milwaukee. He attended Saint John's Cathedral High School, where he met his wife Rita. She made such an impression that he knew in the "first class, first hour" that she was the one. After graduating high school, Bill took four "gap" years (as millennials now call it) before attending the University of Wisconsin and later enrolling at Marquette University Law School. He was the first person in his family to graduate college. All of which, according to colleague Dennis Purtell, Bill paid for by hustling freshmen at poker.

As a newly licensed attorney, Bill worked as an assistant district attorney for Dave Cannon. After a few years, he became a Public Defender in Children's Court, which at that time was a project run by the Legal Aid Society and Junior Bar. Bill routinely tried cases in Children's Court, and also filed jury demands, which was unheard of at that time. He continued his career as a County Court and Circuit Court judge for 12 years, working to reorganize court procedures and processes.

In addition to fulfilling his grandfatherly duties, Bill enjoys playing golf and cards, as well as volunteering for the Italian Community Center. He continues to defend clients' interests in and outside of court, and to resolve disputes as a mediator. Bill is a past president of the MBA and received the MBA Lifetime Achievement Award. He was named one of the "Top 75 Lawyers" by *Milwaukee Magazine* and best mediator in the State of Wisconsin by the *Wisconsin Law Journal*.

Attorneys Needed for Milwaukee Justice Center Mobile Legal Clinic

Is improving access to justice a priority for you? Are you looking for opportunities to provide *pro bono* services to those in need? The Mobile Legal Clinic is currently requesting attorney volunteers to staff the clinic for these shifts:

- **Second Tuesday of every month** from 9:30 to 11:30 a.m. at the Washington Park Senior Center
- **Third Wednesday of every month** from 3:00 to 5:00 p.m. at the Silver Spring Neighborhood Center
- **Saturdays** throughout the year

For more information or to sign up, contact Melissa Bartolomei, Attorney Supervisor, Milwaukee Justice Center, (414) 278-3988 or melissa.bartolomei@wicourts.gov.

Mission Statement

Established in 1858, the mission of the Milwaukee Bar Association is to serve the interests of the lawyers, judges and the people of Milwaukee County by working to: promote the professional interests of the local bench and bar; encourage collegiality, public service and professionalism on the part of the lawyers of Southeastern Wisconsin; improve access to justice for those living and working in Milwaukee County; support the courts of Milwaukee County in the administration of justice; and increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.

Message From the President



Attorney Shannon A. Allen, DeWitt Ross & Stevens



As I write my first column for the *Messenger*, I am honored to begin my year of service as president of the Milwaukee Bar Association. I thank all who attended and supported the MBA at the Annual Meeting on May 16 at Miller Park. It was a most enjoyable evening, as we recognized the 2017 MBA award winners—Nancy J. Sennett, Janet A. Nelson, Margaret E. Niebler-Brown, and Marcia Facey Drame—swore in new officers and board members, and thanked Andy Wronski

for his year of dedication and service as MBA president. It was a unique and fun opportunity for MBA members, sponsors, and friends to network and enjoy Miller Park. For many, the highlight of the evening was meeting Hank the Dog (the most famous dog in Major League Baseball) and the Famous Racing Sausages. MBA members certainly have their priorities in order! I was pleased to see lawyers representing diverse practice areas at the meeting and the networking reception that followed.

In mid-June, I attended the 2017 State Bar of Wisconsin Annual Meeting & Conference in Wisconsin Dells. MBA Executive Director Sarah Martis also attended. It was a wonderful venue for us to share ideas with attorneys from around the state, and a great opportunity to connect directly with MBA members.

We are fortunate to practice in a vibrant legal community. Like many others, I have benefited from mentoring and other relationships through the years at the MBA. Let's work together to continue this vital tradition for the next generation of MBA members. As I stated at the Annual Meeting, I intend to focus my efforts on engaging young lawyers in the Milwaukee area through MBA programming, networking functions, and annual events such as Judges Night, the Annual Meeting, the Memorial Service, the Milwaukee Justice Center Run for Justice, and the State of the Court Luncheon. To that end, I look forward to working closely with Laurina Kinnel, president of the Milwaukee

Young Lawyers Association. Both organizations have long-standing reputations for strong member participation and leadership in the Milwaukee legal community. I anticipate that the MBA and MYLA will coordinate efforts of our members to move both organizations forward in a meaningful way.

A highlight of my summer to date was participating in the 7th Annual MJC 5K Run for Justice on June 21. It was a picture-perfect evening at Milwaukee's lakefront for runners, walkers, sponsors, and supporters to mingle, exercise, and raise money for the MJC. I enjoyed speaking with several new MBA members, recent law school graduates, sponsors, and first-time participants in the event. Please be sure to put this event on your radar for June 20, 2018.

If you have not had the opportunity to visit the MJC, please contact Mary Ferwerda, its executive director, to set up an appointment for a tour. I have been a MJC volunteer attorney for four years, and it has been an invaluable experience. I enjoy working with MJC clients on pressing legal issues, and with law students who exhibit the utmost professionalism.

Another highlight of my summer will be attending the Grow Your Practice Institute sessions on Monday, July 10 ("Effectively Managing Your Time") and Wednesday, July 26 ("Maximizing and Leveraging Your Online Presence"). The Grow Your Practice Institute is a free program series for MBA student members and members licensed 2012 or later. While this program series is geared toward new and incipient attorneys, all are welcome to attend. For more information and to sign up, please visit <http://milwbar.org/meetinginfo>. I hope to see you at one or both July sessions.

We need to work together to increase the MBA's presence on social media. In my effort to make the organization more accessible and user-friendly to younger lawyers, please be sure to like the MBA on Facebook and LinkedIn, and to follow us on Twitter. By liking our Facebook page, you can win CityTins coaster gift cards and visit unique, locally-owned bars, restaurants, and performing arts venues in Milwaukee at a substantial discount. Three winners will be selected. The contest ends August 31, 2017.

If you have any suggestions on how the MBA can better serve its membership, please contact me directly. I want to hear from you. Enjoy your summer and Go Brewers!



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Sheridan Ryan Wins 2017 MBA Messenger Award



Sheridan Ryan

Statement of the panel of judges:

The *Messenger* Award Panel selects Sheridan Ryan of the Medical College of Wisconsin as the winner of the 2017 MBA *Messenger* Award for her article, “Zero Tolerance’ for Violence and Violent Patients: Sound Policy or Sound Bite?,” appearing in the Fall 2016 issue. At the outset, we three award judges note that the four issues over the past year offer a particularly rich array of well-written articles covering new case law, user-friendly help with various legislative mazes, timely public policy updates, and fascinating historical studies. Ultimately, we had to make a choice. We chose the “Zero Tolerance” article for several reasons.

The article describes the uneasy fit of the workplace violence “zero tolerance” OSHA guideline in the context of hospital settings. The “zero tolerance” guideline presupposes that an individual understands the consequences of his actions and has an ability to control his behavior. Using stories of people who, while suffering from medication errors, undiagnosed brain disease, or Alzheimer’s, engaged in discrete acts of violence in a health care setting, the author questioned whether those acts truly were within the person’s control. The author then suggested that state and national legislation should require more targeted training for healthcare workers to anticipate and prevent violence by persons who might not be able to control their own behavior. Zero tolerance, in the author’s opinion, puts the onus on the ill person and unduly relieves healthcare workers from any duty to protect or prevent.

This article merits an award because it broaches a topic affecting all *Messenger* readers as consumers and citizens, and not simply one particular practice group. The article is effective, as is good legislation, because it illustrates its policy position with compelling human stories of difficult situations. Most of the stories have happy endings. The article is heavily footnoted, providing a good bibliography for further study. Thanks to Sheridan Ryan for provoking us to think beyond the “sound bite.”

Each year a contributor is selected to receive the MBA *Messenger* award for the best article. Our panel of three reviews all four issues and chooses the article that is most interesting, timely, and clearly written.

Honorable Margaret D. McGarity
Honorable Beth E. Hanan
Attorney Kelly L. Centofanti

CLE Calendar

July 2017



All CLEs are at the MBA unless otherwise noted.

Monday, July 10

Grow Your Practice Institute: Effectively Managing Your Time

4:00 - 5:15 p.m.

Thomas M. Olejniczak, *Conway, Olejniczak & Jerry*

Aaron T. Olejniczak, *Andrus Intellectual Property Law*

1.0 CLE credit

Wednesday, July 26

Grow Your Practice Institute: Maximizing and Leveraging Your Online Presence

4:00 - 5:15 p.m. with networking reception to follow

Steve Ryan, Founder & CEO, *RyTech*

Tim Pierce, *State Bar of Wisconsin*

1.0 CLE credit



Thank you to our April, May, and June CLE presenters!

Annual ERISA Litigation Update

Charles P. Stevens, *Michael Best & Friedrich*

CERCLA Litigation: The Basics

Dillon J. Ambrose, *Davis & Kuelthau*

Elizabeth K. Miles, *Davis & Kuelthau*

The Milwaukee County Children’s Court Unified Court—the Nexus Between Children’s and Family Courts

Hon. Mary Triggiano, *Milwaukee County*

Circuit Court, Children’s Division

Susan Medina, *Milwaukee County Children’s*

Court, Children’s Division

Jane E. Probst, *Probst Law Offices*

Health Care Worker Protection

James A. Schacht, *Wisconsin Department of Workforce Development*

How to Win Cases Under the Defend Trade Secrets Act

Patrick Huston, *The Huston Law Firm*

(San Diego, CA)

Westlaw Wednesday—Tax Research With Checkpoint

David Wolak, *Thomson Reuters*

Understanding & Calculating Lost Profits for Litigation

Benjamin Wilner, *Alvarez & Marsal*

(Chicago office)

Startup Intellectual Property Issues

Louis Condon, *gener8tor*

Recent Trends in False Claims Act Enforcement and Whistleblower Suits

Doris E. Brosnan, *von Briesen & Roper*

Stacy C. Gerber Ward, *von Briesen & Roper*

Family Court Judges Live and in Concert!

Hon. Michael J. Dwyer, *Milwaukee County Circuit Court*

Hon. Paul R. Van Grunsven, *Milwaukee County Circuit Court*

Hon. Mary M. Kuhnmuench, *Milwaukee County Circuit Court*

Hon. Kevin E. Martens, *Milwaukee County Circuit Court*

Hon. Richard J. Sankovitz, *Milwaukee County Circuit Court*

Comm. Ana Berrios-Schroeder, *Milwaukee County Family Court Commissioner’s Office*

Comm. David Pruhs, *Milwaukee County Family Court Commissioner’s Office*

Susan A. Hansen, *Hansen & Hildebrand*

Richard H. Hart, *Hart Law Office*

Paul Stenzel, *Hansen & Hildebrand*

Westlaw: Practical Law Basics for New Attorneys and Summer Associates

Steven Silverstein, *Thomson Reuters*

DNR Procedures for WEPA Compliance: The Revised Wisconsin Administrative Code NR 150

David Siebert, *Wisconsin Department of Natural Resources*

Meet Your MBA Board Member: Aaron T. Olejniczak

Sarah J. Martis, CAE, Milwaukee Bar Association Executive Director



Driven by a desire to combine his passions for science, business, and helping others, Aaron T. Olejniczak found his way to Milwaukee via his hometown of Green Bay to become a patent attorney, and has never looked back. He credits three people who encouraged him in his pursuits: his father Tom Olejniczak of Conway, Olejniczak and Jerry in Green Bay; his father's former law partner Jerry Smyth; and his mentor over the years, to whom his father and Jerry introduced him, George Solveson of Andrus Intellectual Property Law.

Aaron joined the MBA Board of Directors in June 2015. He uses the words opportunity, leadership, and community to describe the MBA, and it is easy to see why. Aaron has leveraged all three concepts in his involvement with the MBA. He is co-chair of the MBA Foundation's Golf Committee and actively involved with the Membership Committee. He is also a leader in strategic planning in continuing legal education, including service as a Program Committee member for the MBA's new Grow Your Practice Institute series.

As the new MBA vice president, Aaron hopes to continue the work of recent past presidents Marcia Drame and Andrew Wronski, along with that of current leaders Shannon Allen and Matt Falk. Aaron is emphatic that "the vision and leadership of these individuals cannot be overstated." He wants to continue to transform the MBA into a hub of activity for the Milwaukee legal community, support the important

services offered through the MBA Foundation, and create opportunities for all types of attorneys.

Aaron also has a day job as a registered patent attorney and partner at Andrus Intellectual Property Law. He handles a wide variety of intellectual property disputes, concentrating on patent and trademark litigation at the district and appellate court levels, post-grant patent challenges such as *inter partes* review and *ex parte* reexamination before the U.S. Patent Trial and Appeal Board, and trademark opposition and cancellation proceedings before the Trademark Trial and Appeal Board. Aaron is also experienced in alternative dispute resolution, including mediation and arbitration.

Milwaukee is a special place for Aaron. When he was growing up in Green Bay, Milwaukee was always the "big city." When he arrived in Milwaukee to clerk during law school, he found that it is a big city with the heart of a small town. In his words, "the people are genuine, the bar is filled fantastic attorneys, and it is only a short drive from where I grew up." Perhaps more importantly, Milwaukee is where he met his wife, Shaun Marie. They have put down roots in their adopted hometown of Cedarburg with their three children, James, Caroline, and Mia.

When asked the infamous question about what his last meal would be, Aaron acknowledges that he has several excellent cooks in his life. "It would come down to either a roast wild duck with wild rice prepared by my Mom and Dad, or chicken mole prepared by my lovely wife," which was the first meal she cooked for him. If no one wanted to cook, he would follow the tradition of many Wisconsinites, and go out for a perch fry with his family.

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Upcoming Events 2017

Wednesday, August 2 Golf Outing

11:30 - 7:30 p.m.
Fire Ridge Golf Club
2241 County Road W
Grafton, WI 53024

Thursday, August 24 Member Mashup

5:00-7:00 p.m.
Kimpton Journeyman Hotel
310 East Chicago Street
Milwaukee, WI 53202

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Tuesday, October 3 State of the Court Luncheon

Noon - 1:30 p.m.
Wisconsin Club
900 West Wisconsin Avenue
Milwaukee, WI 53233

Thursday, November 16 Law & Technology Conference

7:30 a.m. - 5:00 p.m.
Italian Conference Center
631 East Chicago Street
Milwaukee, WI 53202

New Benefits for MBA Members!

The MBA values your continued membership. To show you just how important you are, we've added several new benefits:

- 35 - 45% off Konica Minolta printers and copiers with Central Office Systems
- 15% discount on American Bar Association book purchases with our special code
- Up to 50% off on office essentials, furniture, break-room solutions, and more through Office Depot



A Short Guide to the Wisconsin Open Meetings Law

Attorney Douglas H. Frazer, DeWitt Ross & Stevens



Wisconsin's open meetings law, enacted by the state legislature in 1975, requires that all meetings of governmental bodies be open to the public. Found in sections 19.81 through 19.98 of the Wisconsin Statutes, it begins with a statement of policy: because a representative government is "dependent on an informed electorate ... the public is entitled to the fullest and most complete information concerning the affairs of government as is compatible with the conduct of government business."¹

This policy goal is particularly important on the local level, for it is there that the affairs of government affect the public daily. Municipalities provide services and implement procedures on which we all rely. The services include public safety, courts, roads and bridges, snow plowing, solid waste and recycling pickup, water, sewer, zoning, permitting, public health, and libraries. The procedures include rules for petitions, appeals, and in general the opportunity to be heard.

Apart from requiring that all meetings of governmental bodies be open to the public, the law creates a presumption that the public is entitled to receive full and complete information about meetings—including prior notice and a detailed agenda—any time a governing body engages in government business, unless a specific exception applies.

The law applies to all "governing bodies." This includes not only a primary governing body but also boards, commissions, committees, councils, departments, or formally constituted subunits created by constitution, statute, ordinance, rule, or order.²

The law applies to "meetings" of governing bodies. This term includes the kinds of activity normally thought of as meetings, but it can also include a lot more. If one-half or more of the members of the governing body are present, the meeting is presumed to be "for the purpose of exercising the responsibilities, authority, power or duties delegated to or vested in the body." The term does not, however, include "any social or chance gathering or conference provided it is not intended to avoid the law."³

Wisconsin courts consider the purpose of the gathering and the number of members of the body present. The absence of a majority of the members is not always determinative. In some situations, the number of members who may control the outcome of an issue is less than a quorum of the governing body. This is called a "negative quorum." For example, on issues that are subject to a two-thirds vote, the gathering of three of seven members—a sufficient number to defeat proposed action by the governing body—is subject to the open meetings law if the gathering is for the purpose of discussion, decision, or information-gathering related to that issue.⁴

The law may also apply to a series of gatherings, each one of which includes less than a controlling number of members. For instance, if four of seven members can control the outcome of the matter, the law may be violated if Member A discusses the issue with Member B, then later discusses the issue with Members C and D. That series of discussions could constitute a "meeting" of four members even though not all four were present at the same time. The courts refer to this as a "walking quorum" and subject it to the same requirements that apply to other meetings of governing bodies to promote the purpose of the open meetings law.⁵

Even a telephone call made for the purpose of engaging in government business can be a meeting if a controlling number of members participate in the call. The same goes for e-mail communications—particularly in connection with features such as "forward" and "reply to all."⁶

A key element of the open meetings law is the notice required prior to any meeting.⁷ There are two general requirements. First, the presiding officer or designee must communicate notice to the public. This is usually done by posting the notice on the municipality website and places likely to be seen by the general public (municipal notice boards), or by publication in some circumstances.⁸ In most cases the public notice must be given at least 24 hours prior to commencement of the meeting.⁹

Second, every public notice must set forth the time, date, place, and subject matter of the meeting.¹⁰ Each agenda item ordinary should appear on the notice.¹¹

The definition section of the statute is detailed, and Wisconsin courts have interpreted the law broadly. A governing body is engaged in governmental business when its members gather simply to hear information on a matter within the body's authority. The members need not actually discuss the matter or otherwise interact with one another to be engaged in governmental business.¹²

The open meetings law allows the governing body to go into closed session (without members of the public present) under certain circumstances.¹³ Most commonly, closed sessions involve personnel matters, competitive bid or bargaining issues, or conferences with legal counsel who will advise the governing body on litigation strategy.

The requirements of the open meetings law may seem burdensome and legalistic—and in some instances socially awkward—but they make some sense. Put yourself in the shoes of a citizen who may feel differently than you do about an issue. That citizen would want, and should enjoy, equal notice of and access to a gathering of the members of the governing body addressing the issue, and the opportunity to be heard at that gathering if public comment is permitted. The open meetings law protects the right of each citizen to attend and observe open session meetings of governing bodies and to know in advance what will be discussed.

Meetings of governing bodies have both formal and informal aspects. The formal elements of public meetings are the most obvious. Each has its own parliamentary procedures. Each is a business meeting. Each is noticed in advance with an agenda.

On the other hand, most governing bodies try to make their meetings welcoming. In the appropriate time, place, or manner—and consistent with the open meetings law—governing bodies often allow for and receive public comment.¹⁴

That's our concise guide. It sometimes appears to well-meaning reformers that a governing body's rules and procedures are erected to keep elected officials at arms-length from their constituents. But these rules and procedures are informed not by stuffiness or rigidity but by legal requirements. The notion, for instance, that municipalities could be stronger and government more inclusive if elected officials and residents would get together informally from time to time in a "town hall" setting to exchange ideas and information is not workable. The open meetings law doesn't permit it.

MBA Member Testimonials

What benefits have you experienced as an MBA member?

I have been a member of the Courts Committee for as long as I can remember, and co-chaired it with Pat Schoen for about 16 years. My career as a court administrator and prosecutor led naturally to that committee. I experienced the benefits of (1) ability to keep up with developments and occasionally provide support; (2) useful networking, often with persons not directly connected with the criminal justice and judicial administration fields in which I worked; (3) pleasant new associations and appreciation of the breadth of the legal profession; (4) ability to develop and practice some “elusive” organizational and leadership skills; and (5) opportunity to influence the adoption of improved practices. My MBA participation in general has given me a sense of having a seat at the table and a voice, so to speak, in professional matters of interest to me. I never aspired to higher leadership positions (I turned down an opportunity to run for the board), but the MBA offers many opportunities, particularly for younger lawyers, to enhance their resumes and get involved in rewarding and meaningful public and professional service.

—Herman B. John

What drives you to continue your membership in the MBA?

The MBA has provided me with support and connections unlike other professional groups. I first joined the MBA while attending law school at Marquette. Initially my focus was on networking, but I quickly learned that the MBA also provides great resources for skill-set building. I am approaching my one-year mark practicing law. During the past year, I have attended seminars, networking events, and bench-bar committee meetings hosted by the MBA. These events not only introduced me to fellow Milwaukee attorneys of varying experience levels, but also provided me avenues for growth. The MBA brings together attorneys from different practice areas, which I view as a welcome change from other professional groups. I also enjoy giving back to the community through the MBA's partnership with the Milwaukee Justice Center. I look forward to continued participation in the MBA as I build my career.

—Matthew J. Ackmann

Welcome New MBA Members!

Tmara Abidalrahim
Kelsey Anderson
Barret Arthur, *Big Shoulders Capital*
Joshua Baldwin, *Foley & Lardner*
Kathleen Dreyfus Bardunias, *Foley & Lardner*
Brendan Behl
Evan Berube
Alex Bielinski
Linda Budz, *Big Shoulders Capital*
Jennifer Budzien
Mary Bussie, *Marquette University Law School*
Kristen Chang, *Hall, Render, Killian, Heath & Lyman*
Andrew Christman, *von Briesen & Roper*
Lisamarie Collins, *Foley & Lardner*
Bennett Conard, *von Briesen & Roper*
Trevor Currie, *Foley & Lardner*
Devon Daughety
Jessica Dickman, *Lagmann*
Michael Edwards, *Zacherl, O'Malley & Endejan*
Dale Egan, *von Briesen & Roper*
Randy Ensign-Jones, *Marquette University Law School*
Adam Finkel, *von Briesen & Roper*
Jamie Ford
Steven Gage, *Schmidt, Rupke, Tess-Mattner & Fox*
Stacy Gerber Ward, *von Briesen & Roper*
Elly Goettelman, *DePaul University College of Law*
Ryan Gray, *University of Wisconsin Law School*
Jeffrey Guerard, *Ahmad & Guerard*
Jason Gullett, *Frontier Title & Closing Services*
Christopher Guthrie, *Marquette University Law School*
Matthew Hayes, *Legal Action of Wisconsin*
Candace Hays
Andrew Hermandorfer, *University of Wisconsin Law School*
Caroline Hogan, *Foley & Lardner*
William Hughes, *Foley & Lardner*
Alexander Huppertz
Brandon Jubelirer, *Hawks Quindel*
Nick Kitzman, *Foley & Lardner*
Jessica Koo, *Nonprofit Legal Referral Services*

John Kreuser
Elizabeth Kulinski
Dana Lach, *Foley & Lardner*
Michael Laing
May Lee, *Lee Law Firm*
Sean Lees, *MacGillis Wiemer*
Gregory Lohmeyer
Abbey Magnuson, *Foley & Lardner*
Brendan McAvoy, *McAvoy & Murphy Law Firm*
Daniel McDermott, *von Briesen & Roper*
Anne-Louise Mittal, *Foley & Lardner*
James Mueller
Thomas Murphy, *McAvoy & Murphy Law Firm*
Averi Niemuth
Tolani Odutayo, *Foley & Lardner*
Celia Olson
Raj Patel, *Foley & Lardner*
Lisa Paul, *American Family Mutual Insurance*
Matthew Peters, *Foley & Lardner*
Olya Petukhova, *Foley & Lardner*
Andrew Phillips, *von Briesen & Roper*
Nancy Pomes
Michael Reyes, *Michael Reyes & Associates*
Timothy Reynolds, *Hansen Reynolds*
Rebecca Roeker, *von Briesen & Roper*
Christopher J. Rundell II, *Reinhart Boerner Van Deuren*
Andrew Schumacher, *Foley & Lardner*
Robert Simandl, *von Briesen & Roper*
Alon Stein, *Stein Law Offices*
Paul Stenzel, *Hansen & Hildebrand*
Corey Swinick
Koh Tanimoto, *Foley & Lardner*
Michael Techmeier, *The Cochran Firm Wisconsin*
Emily A. Tercilla
Jean Tibbits, *Boston University Law School*
Jon M. Tyus
Jennifer Van Wie, *Foley & Lardner*
Keith Vemma
Chrissy Wabiszewski
Nicole Wanlass, *Foley & Lardner*
Elizabeth Ward, *von Briesen & Roper*
Michelle Wenninger
Lee Wickert
James J. Wold

A Great Resource for Commercial Litigators

Attorney Jim Clark, *Foley & Lardner*

I previously reviewed the second and third editions of the treatise entitled *Business and Commercial Litigation in Federal Courts*. This is a multi-volume set written by very experienced trial lawyers, with contributions from distinguished federal judges. The treatise deals with the subjects most frequently encountered by commercial litigators. Robert Haig, a well-known litigator with Kelley Drye & Warren in New York City, has been the editor-in-chief of this publication from its inception. The treatise was developed through the ABA Section of Litigation, which receives all the sales royalties.

The fourth edition of the treatise is now available. In addition to updating existing chapters, the new edition contains 25 new chapters, expanding the treatise to 14 volumes. The new chapters discuss subjects of increasing importance to commercial litigators, such as social media, marketing to potential clients, declaratory judgments, health care, fiduciary duty litigation, and regulatory litigation, to name a few.

The chapter on social media walks the trial lawyer through the myriad discovery and evidentiary issues surrounding this revolutionary form of communication. Subpoenas to third-party service providers, privacy concerns, spoliation, and impact on jury selection are among the topics discussed. As in the other chapters, the social media chapter includes a practice aid section, in this instance with model discovery requests

and deposition questions. A comprehensive discussion of the issues a trial lawyer is likely to encounter when litigating a case involving social media is an extremely valuable tool.

Another example of the utility of this treatise is found in the new declaratory judgment chapter. This chapter reviews the statutory and case law governing declaratory judgments, including subject matter jurisdiction, stay of proceedings, availability of other remedies, the right to a jury trial, and burden of proof. The practice aids include a checklist and a model complaint and counterclaim. Especially for trial lawyers who do not regularly make use of the declaratory judgment remedy, this chapter can be a huge time saver in assuring coverage of all the important issues.

It is difficult to overstate the value of this resource to a trial lawyer, even those who do not regularly practice in federal court. The treatise covers almost every topic of interest to a litigator generally. It is the first resource I check when I have a procedural or substantive law question. More often than not, I find the answer or the conceptual framework in which to further explore the issues and develop the arguments. If you have an active litigation practice, and have room (or can make room) on your bookshelf for one research tool, this treatise gets my nomination.

Appropriations Rider Halts FDA's Voluntary Sodium Reduction Efforts

Attorneys Seth A. Mailhot, Paulette M. Mara, and Leah Hurtgen Ziembra, Michael Best

A recent last-minute congressional spending deal includes a rider that prohibits the U.S. Food and Drug Administration from using appropriated funds to “develop, issue, promote, or advance any regulations applicable to food manufacturers for population-wide sodium reduction actions or to develop, issue, promote or advance final guidance applicable to food manufacturers for long term population-wide sodium reduction actions until the date on which the dietary reference intake report with respect to sodium is completed.”

This move is consistent with a House appropriations report from April 2016 that “encouraged” FDA to wait until the dietary reference intake for sodium report is finalized before issuing any voluntary or mandatory guidance on sodium reduction, so that any guidance is based on the latest sound science.

The Obama Administration's sodium reduction efforts resulted in FDA's June 2016 release of its long-awaited sodium reduction targets. Congress' most recent activity on this issue signals that the Trump Administration is not likely to advance those efforts any time soon.

MBA Hosts Annual Boy Scouts Law Merit Badge Clinic

On Saturday, April 29, the MBA hosted the Boy Scouts Law Merit Badge Clinic. For nearly 10 years, Three Harbors Boy Scout Council has gathered Boy Scouts from across southeastern Wisconsin around Law Day to complete the merit badge requirements, which culminate with the boys participating in a moot court demonstration. Attorney Mike Tobin founded the event, which includes presentations from law enforcement personnel, the district attorney, judges, and attorneys in various practice areas.

Three Harbors Council delivers scouting programs to over 26,000 young people in Kenosha, Milwaukee, and Racine Counties. The mission of the Boy Scouts of America is to prepare young people to make ethical and moral choices over their lifetimes by instilling in them the values of the Scout Oath and Law.





2017 Annual Meeting— A Whole New Ballgame

The Milwaukee Bar Association bade farewell to outgoing board members and welcomed new ones at its 159th Annual Meeting on Tuesday, May 16 at Miller Park. The MBA's premier event included an awards program, installation of new directors and officers, enhanced networking, and a unique new venue. More than 200 members of the Milwaukee legal community attended the event.

Milwaukee County Circuit Court Chief Judge Maxine A. White administered the oath of office to the incoming president, Shannon A. Allen of DeWitt Ross & Stevens. Allen specializes in business litigation, employment counseling, employment litigation, and trust administration. She has served on the MBA Board of Directors for five years, and has been an MBA member for 19 years.

Matthew R. Falk of Falk Legal Group will assume the role of president-elect, having just completed his term as vice president.



◀ Andrew Wronski and Nancy Sennett

▼ Mary Ferwerda and Maggie Niebler-Brown



▼ Shannon Allen





▲ MBA officers and directors take the oath of office.



Hank the Dog and Amy Wochos



▲ You know you've always wanted to ...

The new officers and directors share the distinction of being the first ever to be sworn in on the third base dugout of Miller Park. They are:

Vice President:

Aaron T. Olejniczak, *Andrus Intellectual Property Law*

Directors:

Elizabeth A. N. Haas, *Foley & Lardner*
 Timothy H. Posnanski, *Husch Blackwell*



Shannon Allen



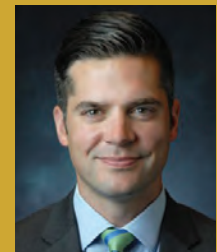
Matt Falk



Aaron Olejniczak



Elizabeth Haas



Tim Posnanski



Timothy Saviano

The MBA would like to give special thanks for their service to:

Past president:

Andrew J. Wronski, *Foley & Lardner*

Directors: S. Edward Sarskas, *Michael Best & Friedrich*

Maria L. Kreiter, *Godfrey & Kahn*



Andrew Wronski



Maria Kreiter



Edward Sarskas

Annual Meeting Awards

The awards program honored the following recipients:

Lifetime Achievement Award:



presented to a lawyer whose career achievements in both the practice of law and community service demonstrate a consistent level of excellence.

*Nancy J. Sennett (ret.),
Foley & Lardner*

Distinguished Service Award:



given to a member who has provided extraordinary support to the bar over several years and has helped to better the profession.

*Marcia Facey Drame,
Northwestern Mutual*

E. Michael McLann Distinguished Public Service Award:



presented to a member of the bar who exemplifies outstanding public service and who has dedicated his or her career to serving the public.

*Janet A. Schutz Nelson,
Milwaukee County Child Support*

Lawyer of the Year:



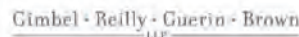
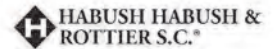
for the lawyer whose activities and extraordinary accomplishments reflects well not only on the award winner, but also on the profession in general.

*Margaret E. Niebler-Brown, Legal
Action of Wisconsin*



MILWAUKEE BAR ASSOCIATION

100 % CLUB MEMBERS



STUPAR, SCHUSTER & BARTELL, S.C.

100% Club members consist of firms with five or more attorneys who are all Milwaukee Bar Association members.

The Reel Law



Attorney Fran Deisinger, Reinhart Boerner Van Deuren

Adam's Rib

Directed by George Cukor
1949, 101 minutes

Katherine Hepburn and Spencer Tracy made nine films together during the middle of the last century. Tracy was a full-fledged star during the period, and the films, which were enormously popular, helped re-establish Hepburn's stardom, which had waned after she first burst onto the scene during the 30s. Like many of these films, *Adam's Rib*, made in 1949, exploited the supercharged personal chemistry between the two actors (who were also an off-screen couple for decades, notwithstanding Tracy's marriage) in a classic "battle of the sexes" plot.

Adam and Amanda Bonner (or as they fondly call each other, "Pinkie" and "Pinky") are an assistant district attorney and in private law practice, respectively. The film sets the narrative stage by showing the couple's happy domestic life in their Manhattan apartment, with a maid delivering breakfast and newspapers to the couple's bedroom and frequent drop-ins from their neighbor across the hall. The neighbor is Kip Lurie, an Oscar Levantish songwriter (played with verve by David Wayne) who is besotted with Amanda. The Bonners are obviously in love and in sync, but the mere fact that Hepburn was playing a childless, yet married, middle-aged professional woman in 1949 must have been jarring for the audience. This setup presages the fireworks to come.

Enter the firecracker. In Lower Manhattan, a jaunty Warren Attinger (Tom Ewell, who a few films later had *The Seven Year Itch* for Marilyn Monroe) emerges from his office building at workday's end, finds a flower for his lapel, and sets off for a liaison. He doesn't notice his wife Doris (Judy Holliday, best known for her comic masterpiece *Born Yesterday*) surreptitiously following. When Doris is jostled in a subway station as she tracks Warren, we see the pistol she is nervously carrying. Following Warren to an apartment, she pulls out the pistol—and the instructions for it, which she reads quickly—then bursts through the door to find her unfaithful husband in a romantic clinch with a lingerie-clad paramour, Beryl Caighn (Jean Hagen, the gloriously squeaky voiced "Lina Lamont" of *Singin' in the Rain*). Pointing the gun in Warren and Beryl's general direction while looking away, she fires, wounding Warren in the shoulder, then immediately collapses to comfort him while Beryl screams for help.

News of the avenging wife hits the papers the next morning, and as the Bonners discuss the case, Amanda argues to Adam that Doris has stood up for her whole gender, and that if a man had done the same thing no one would question the honor of the act. Adam is appalled, and sparks begin to fly between the spouses. Where Adam sees mere criminality, Amanda sees a cause.

At this point, you are probably thinking that you can write the rest of the story. And while it's true that we can all see where this is going, we're fortunate that the scriptwriters were the great theater couple Garson Kanin and Ruth Gordon. Yes, after his breakfast argument with Amanda, Adam goes to his office only to be handed the Attinger case, to his groaning unease. Meanwhile, Amanda decides to defend Doris against the attempted murder charge that Adam pursues. The State of New York v. Attinger thus also becomes Bonner v. Bonner. (There is a small subset of films that feature husband-and-wife lawyers opposing each other in court, but I believe *Adam's Rib* was the first. The ethics of such a situation are impossible, of course, but it's an irresistible story device.)

Because there is no doubt that Doris pulled the trigger, Amanda must find another defense. The theme she pursues, plainly stated, is that women are treated differently and, but for that, a jury would exonerate Doris. (Despite this progressive argument, however, another element of Amanda's defense is portraying Beryl as a home-breaking hussy.)

Although the story's theme is serious, *Adam's Rib* is a comedy, and most of the comic moments happen in court. There is a recurring bit where Adam and Amanda, at opposite ends of adjoined counsel tables, slyly drop their pencils so that they can lean over and communicate with each other. This starts as *sub rosa* flirtation, but as the trial (and their relationship) devolves it ends with the great Hepburn sticking her tongue out at the estimable Tracy, and him banging his head on the table's underside in reaction.

After each day of trial, the film returns to the Bonner apartment, where the day-end rubdowns the couple give each other become another skirmish. Finally, after Amanda has offered a series of expert witnesses—women whose accomplishments and talents astonish the judge, jury, and packed courtroom (trial movies of the time always had packed courtrooms)—the relationship breaks down completely and Adam leaves Amanda. The final straw is the final expert, a circus performer who, at Amanda's urging, lifts Adam with one hand above the bench, with the judge gaveling "Order!" and general uproar in the room. But even more disturbing to Adam than being literally one-upped by his own wife in court is his conviction that the defense she is presenting is nothing more than an extra-legal dodge.

The trial concludes, and sure enough, Amanda's ploy works: Doris is acquitted. But Amanda is lovelorn at her loss of Adam. The scene shifts to Kip's apartment that evening, where Amanda simply wants to cry on her neighbor's shoulder about her lost husband, while Kip, seeing a romantic opening, plies her with rapid-fire encomiums and constantly refills her martini glass. Outside, Adam looks up at the apartment window and sees the pantomime of apparent lovers behind the curtain scrim. Like Doris Attinger, he bursts through the door—black pistol in hand—just as Kip moves in for a kiss. Startled, Amanda tries to talk their way out of it, finally insisting that "no one has a right to ...!" before catching herself in mid-sentence. Adam smiles and says, "That's all I wanted to hear." To Amanda and Kip's horror, he dramatically puts the gun in his own mouth ... and bites off the end. "I'm a thicker for licorice," smirks the prosecutor. With Adam having proved his point, the battle of the sexes comes to a draw, and Pinky and Pinkie find their way through the film's denouement to a happy ending.

Despite its lighthearted approach, *Adam's Rib* faced head-on the different treatment of women in domestic violence cases. But in the trial scenes, the judge treats Amanda no differently than he treats Adam, and the jury is integrated both by gender and race. In that sense, the film was at least a generation ahead of its time. As I look at the essays I have written about legal films, I find that almost none of those films feature women lawyers. Such films are rare, even now. I'm enough of a movie snob to think that long-form photoplays still have it all over the thinner dramas of television. Yet, women lawyers and judges are now very common on the small screen. An explanation of that difference will have to come from a smarter pop-culture observer than me.

Some aspects of *Adam's Rib* feel dated or corny, which is not surprising given that it is almost 70 years old. Still, it is a great pleasure to watch Hepburn and Tracy go at it, and a pleasure for us that they did so once in our domain.



Milwaukee Justice Center Team Attends 2017 Equal Justice Conference

Attorney Kyla Motz, Legal Director, Milwaukee Justice Center

Each year the American Bar Association hosts the Equal Justice Conference, which brings together the civil legal aid community to discuss and address issues in providing legal assistance to low-income individuals. I was part of a Milwaukee Justice Center team that attended this year's conference.

Although the EJC provides sessions on a multitude of topics, our team focused on three: (1) improving self-help tools, resources, and communications with *pro se* litigants; (2) improving remote access to services for litigants who cannot reach our courthouse location; and (3) improving training methods and resources to prepare student and attorney volunteers.

One of the most interesting sessions, "Beyond Plain Language: Building Better Self-Help Tools," explored the discovery by a group from Harvard Law School that using images, cartoons, and comics to convey instructions is more effective than even very simple written directions. This group found that it could convey much more information through images and cartoons. As a bonus, it also found that *pro se* litigants were less intimidated by the process described with cartoons and were more confident that they could complete the process. At the MJC, we frequently struggle to convey complicated legal information to clients in ways they can understand. As we update our client resources, checklists,

and informational sheets, we will look for ways to incorporate images, cartoons, and flowcharts to make our materials more understandable.

Another session our team found useful concerned development of "bite-sized" online training for volunteers. By breaking the training into smaller pieces and making it available online, volunteers can take as much time as they need to become familiar with the material. Online programs can provide more material than could be covered in a one or two-hour in-person training session, and serve as a resource to which volunteers can return when they need a refresher. While the MJC has online training for its student volunteers, it is long (and, admittedly, a little boring) and needs an upgrade. We are now considering an online "pre-training" with short modules to familiarize our student volunteers with the multitude of information they need to provide effective service to our clients.

We also attended sessions on ways to better serve clients who do not speak English, and how buses and RVs (such as the MJC Mobile Legal Clinic) make services accessible to individuals who live in rural areas or who are unable to access principal locations such as the courthouse. The Equal Justice Conference was a wonderful opportunity to connect with the civil legal aid community, find answers to common problems, and find ways to improve access to justice in our community.

Wanna Cry?

Attorneys Adrienne S. Ehrhardt and Joel E. Henry, Ph.D., Michael Best

Many tears are undoubtedly being shed as WannaCry, probably the single largest cyberattack of 2017 so far, makes its way around the world, paralyzing computer systems and businesses. The WannaCry ransomware attack is believed to have begun either with phishing e-mails containing malicious links or documents containing the virus. The attack targets computers that did not patch a vulnerability in Windows 10, Windows 7, Windows XP, and Windows servers. Once corrupted e-mails or files are opened, the virus not only encrypts files of numerous file types, but also scans the networks connected to that computer in search of similar vulnerabilities so it can spread to other file systems and computers, and eventually hold entire file systems hostage. The organization's files remain encrypted unless it pays a ransom in bitcoin ranging from \$300 to \$600.

Once it's in, WannaCry ransomware begins its insidious work by anonymizing communications with the attacker's servers (hiding their names and locations). By making these communications anonymous, the criminals hide their attack and prevent the victim from intercepting keys that would unlock the data or bitcoin payment a victim might send. WannaCry uses a number of executable files to carry out parts of the infection, which, in essence, scrambles the data into a new unusable format. The virus can read and encrypt 160 different file types. You will know that you are a victim if your files retain their names but have a .wrcry or .wncry extension (as opposed to, for example, .docx or .vsdx).

As if that isn't bad enough, WannaCry deletes all original files using files with these names: WMIC.exe, vssadmin.exe and cmd.exe. If the WannaCry virus has not yet been deployed in your organization, check

to see if any of these files are on your system, and delete them to avoid inadvertently launching the virus.

Even if your organization does not currently believe that it has been affected by this virus, it should back up important files and install the latest Microsoft patches across its entire infrastructure where the Windows OS is used. Microsoft has issued an emergency patch, which should protect the entire infrastructure. This is especially important because the malware scans the entire local area network, then begins propagating the viral code to accessible external IP addresses.

Best practices to protect against malware threats include:

- Do not open or click on any e-mails from unrecognized senders.
- Keep all software up to date, including all security updates and patches.
- Back up files regularly on systems that are not connected to your main system.
- Make certain all files uploaded to a system from any source are virus-scanned with software that detects the virus.
- Remove plug-ins and add-ons to browsers that are not certified to be virus free, and keep other plug-ins, such as Adobe Flash Player, Adobe Reader, and Java, up to date.
- Keep all employees informed of their roles in abiding by your organization's best practices.

Milwaukee FCC Office Brings Strong Team Approach to Challenges of Family Court

Attorney Paul W. Stenzel, Hansen & Hildebrand

The river of cases is fast-moving and seemingly never-ending. Managing that river and keeping it from flooding the system falls to the Milwaukee Family Court Commissioner's Office.

Almost every family law case filed in Milwaukee County must make the stop at the commissioner's office. Ten full time commissioners held 35,000 hearings in 2016. The cases include pre- and post-judgment motions, paternities, temporary hearings in divorces, child support enforcement, and domestic violence and harassment injunctions.

The longer-tenured commissioners note that the intensity of people's behavior has increased over the years, as has the level of conflict. Many of the commissioners believe social media and texting exacerbate conflict.

It is inevitable, then, that the volume and nature of the work shape the culture and personalities of the Milwaukee FCC Office. But perhaps not how you might expect.

The first thing you notice is the genuine camaraderie among the commissioners. "We have so much conflict in our day, we don't need more between us or in the office," Assistant Commissioner Cathy Kendrigan said. At first the claims of a great workplace—"We all cover for each other"; "Everyone approaches cases with the right attitude"; "We all get along"; "We have a really great office"—seem too good to be true. But after spending time with them, watching how they interact, and listening to their stories, the claims gain credence.



Cathy Kendrigan

"We work really hard as a unit to lighten the atmosphere," said Commissioner Ana Berrios-Schroeder, who recently ascended to the top spot, succeeding Sandy Grady in 2016. Celebrations abound. "We're always celebrating something," Berrios-Schroeder said. On National Puzzle Day, Assistant Commissioner Sue Callies brought each person in the office their own little puzzle. (How

many workplaces celebrate National Puzzle Day? Who knew there was a thing?)

In addition to the office camaraderie, Deputy Commissioner David Pruhs cited three reasons the office functions as well as it does.

First, commissioners work on an eight-week rotation, spending one week on each of the eight calendar types. "The eight-week rotation helps address the stresses [of the work]," Pruhs said.

Second, Berrios-Schroeder notes that each commissioner has nearly absolute independence and discretion when it comes to the substantive decisions. Presiding Family Judge Michael Dwyer affirmed this approach: "We have confidence in our commissioners. We want them to make orders in their discretion that they are confident they have the legal and factual basis to make."

Although independence is paramount, each Friday commissioners go to lunch and talk over cases, in addition to attending bi-weekly meetings with a formal agenda.

Procedure is a different matter. "We have a consensus on procedure," Berrios-Schroeder said, while pointing to a thick three-ring binder of policies and procedures.

The third motivation for the commissioners is a sense of purpose. "There's a strong sense of what we're doing—that we're here doing something right for families," said Pruhs.

Given the changes over the years, the focus on stress management and a lighter atmosphere is understandable. Commissioners note the cases seem to have increased in difficulty over time, and some self-represented litigants expect the court to solve all their problems. "It seems as if the litigants we see have less and less respect for the authority of a court, at least for commissioners," Assistant Commissioner Dean Zemel said.

Technology is another challenge. E-filing is great—when it works. "When the server goes down," one commissioner noted, "we're not getting anything done." Assistant Commissioner Kendrigan has noticed subtler effects of technology: "I can't connect with the parties as well when I have to be looking at a screen or typing."

The commissioners noted the challenges of the case-to-commissioner ratio, which leads to less hearing time and longer waits for court dates. For example, Callies knows she can't settle a school dispute that starts in June when the return date is probably four months away. "I send them to the judge because they'll get heard more quickly," she said.

The pet peeves and advice for the bar from the commissioners are common ones: be prepared and follow the local



L to R: Dean Zemel, Jason Mishlowe, Ana Berrios-Schroeder, Sheila Hill-Roberts, Susan Callies, Nancy Sturm, David Pruhs, Janice Rustad (Raully Sandoval not pictured)

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Justice Center's 5K Run Sees Record Turnout

On June 21, the Milwaukee Justice Center held its seventh annual 5K Run for Justice. This year's event featured the largest turnout in its history, including over 250 runners and numerous friends, fans, and volunteers who came to cheer them on. The run raised approximately \$15,000 for the MJC. The Mission River Band—always a favorite with our runners—performed. As a part of the race day festivities, the MJC handed out its Pacesetter Awards to the following individuals:

Melita Biese: Attorney Award

Joy Calmes: Administrator Award

J.J. Moore: Law Student Award

Taylor Gauthier: Undergraduate Intern Award

Many thanks to our supporters who made the 2017 5K run such a great event.



Rich, Melissa, and Audrey Bartolomei



Westward Ho!

All smiles from MJC 5K Run for Justice volunteers as they pose for a group shot after the event



The Visitor

Attorney Lawrence Savell, Herbert Smith Freehills

She faintly heard a voice saying her name. “Annabelle, wake up, you have a visitor.”

Annabelle stirred on the couch, as yet another dream of her childhood faded from her mind. She slowly opened her eyes, confirming that she was in fact in the first-floor sitting room of the assisted living facility that had been her home for several years.

“Annabelle, Julie is here to see you.”

Annabelle saw two people in front of her. The first she recognized by sight and sound as one of the heads of the facility, whom she believed was put on this earth for the sole purpose of constantly waking her up and interrupting her dreams.

The second person was more of a challenge. She appeared to be a teenager, but Annabelle did not recognize her as one of her granddaughters who were still in that age range. She felt that gnawing upset she experienced whenever she had trouble remembering the people who were in her life, and bafflement at how she could seemingly precisely recall things from decades ago but struggle with current information and reality.

“Hi, Annabelle. I’m Julie from the high school.”

With that trigger, Annabelle remembered. From time to time, students of Julie’s age would appear at the facility to spend some time with them. Such visits had one of two origins. Some kids were among the top students, taking on a bit of extra “community service” to help put their Ivy college applications over the top. Others were at the other end of the academic or behavioral spectrum, who had been assigned to come there as the “sentence” for some misdeed at school. In both situations, Annabelle’s usual sense was that the person would rather be somewhere else.

Julie sat down on the couch with Annabelle, and the facility person walked away.

“Nice to meet you,” Annabelle said, turning toward the girl. “So what brings you here today?” She was usually pretty good at assessing rather quickly which category of visit she was experiencing, but this time she had some trouble.

Julie smiled mischievously. “Well . . .,” she began, “I got into a little trouble at school.”

A “category two,” Annabelle thought, but a little different than the others.

“So what did you do?” Annabelle asked directly.

Julie smiled again. “I got into a fight with another girl.”

“What about?”

This meeting was already going differently than Julie had expected. She had assumed she would be prompting the person she was visiting to answer questions, instead of the other way around. But she liked that someone was taking an interest in her.

“She took something from me and I wanted it back.”

“I see,” Annabelle said. “Did you think that was the best way to deal with that?”

“What else could I do? I couldn’t just let her take it.”

“I’m not saying you should have just let her do it, but weren’t there other ways to get it back than fighting?”

“I asked her for it but she refused. She denied she had taken it.”

“Doesn’t your school have some sort of code or rules of conduct, which say that taking other people’s stuff is a violation?”

“I don’t know; I never thought about that.”

“And maybe there’s a procedure for doing something about it that doesn’t involve getting physical.”

They talked a bit more, and Julie agreed to look into what Annabelle had mentioned. Julie said goodbye, and Annabelle smiled, closed her eyes, and drifted off again.

A Week Later

Julie showed up again, clutching a large envelope.

Annabelle, who this time had made sure she was awake in advance of Julie’s scheduled visit, smiled. “What do you have there?” Annabelle asked.

Julie opened the envelope and handed Annabelle an apparently unopened copy of the Centerville High School Student Handbook. Annabelle lifted into position the reading glasses that were suspended from the silver chain around her neck.

“Let’s find the 10 Commandments first,” she said, as she read the index. “Here it is, ‘Student Code of Conduct.’”

Annabelle ran her finger down the paragraphs. “Here’s the reason we first met,” she said. “Under ‘Unacceptable Behaviors,’ item one is ‘Fighting.’”

Julie smiled guiltily.

“And here we go—‘Theft’—a.k.a. Thou shalt not steal. And the ‘Range of Consequences’ includes ‘Parent/guardian contact, restricted participation in school activities, loss of privileges, suspension, restitution, referral to police and superintendent’s hearing.’”

“Wow,” Julie exclaimed, “that’s a lot worse than getting beat up. How do we make that happen?”

They were both getting into it. “There’s got to be some kind of procedure spelled out somewhere,” Annabelle suggested. She flipped through the pages. “Here it is,” Annabelle said. “You have the right to bring violations to the attention of school authorities.”

“I’m not a tattler,” Julie protested.

“You’re not tattling,” Annabelle insisted. “You’re merely sticking up for yourself and asserting your rights against someone who wronged you.”

Annabelle explained to Julie the steps outlined in the booklet. “You should probably mention the fight you had, and that you realize it was not the appropriate way to try to get back what was taken from you.”

Julie agreed, took her booklet and said goodbye, with a more determined gait as she headed out the front door of the facility.

A No-Show?

Julie did not show up that next week, although Annabelle had put on her best outfit—and drank an entire cup of coffee—in anticipation of her arrival. She was disappointed, and she was surprised to sense that emotion. It had been some time since she had looked forward to anything, and thus it had been some time since she had been disappointed that something did not occur.

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Chemerinsky Delivers Spellbinding Supreme Court Review at EDWBA Annual Meeting

A rare treat awaited members of the Eastern District of Wisconsin Bar Association who attended the annual meeting at the Pfister Hotel on April 24. Keynote speaker Erwin Chemerinsky enthralled the crowd with his perspective on the current state of the U.S. Supreme Court, as well as his fast-paced review and preview of the Court's 2016-17 term. Speaking effortlessly and with deft command for at least an hour, without notes and while standing beside the lectern, Professor Chemerinsky easily lived up to his reputation as a preeminent scholar of Supreme Court jurisprudence.

Chemerinsky is Dean and Distinguished Professor of Law at University of California – Irvine School of Law, which he founded. He has also served on the faculties of Duke, University of Southern California, and DePaul Law Schools. He has authored 11 books and hundreds of law review, newspaper, and magazine articles. According to program committee co-chair Laura Schulteis Kwaterski, who introduced him, Chemerinsky has been named the most influential person in U.S. legal education.

Chemerinsky began by addressing the unique developments at the Court over the past year or so. “Everything changed,” he remarked, when Justice Scalia died on February 13, 2016, leaving four Republican and four Democratic appointees. Only eight justices were available during the oral argument calendar from November 2016 to March 2017, resulting in the “Term of Eight.”

The Court has three options in the event of a four-to-four tie, Chemerinsky explained. The first is the classic option of affirming by evenly divided opinion, which had occurred five times in the 2016-17 term at the time of his remarks.

The second option is to seek compromise on a narrow ground. The Court pursued this option in *Zubik v. Burwell*, 578 U.S. ----, 136 S.Ct. 1557, 194 L.Ed.2d 696 (2016). In that case, nonprofit employers, who objected on religious grounds to providing employees with health insurance coverage for contraceptives under the Affordable Care Act, claimed that a regulatory requirement—that they submit a form to their insurers or the federal government so stating—substantially burdened the exercise of their religion. The Court proposed a compromise, requested supplemental briefs on its viability, and then remanded for implementation of the compromise without addressing the merits. Chemerinsky described this scenario as a first in the Court's history.

The third option is to put argument over for decision in the next term. Ample precedent exists for this option: *Brown v. Board of Education*, *Roe v. Wade*, and *Citizens United v. FEC* were each put over for reargument and decision in a subsequent term. The Court did not employ this option 2015-16 term, Chemerinsky noted, but he predicted it would in the 2016-17 term.

Chemerinsky also described this Court as the “Anthony Kennedy Court.” He noted that Justice Kennedy voted in the majority in 98% of cases, a statistic unprecedented in U.S. Supreme Court history.

Chemerinsky did not shy away from comment on the newest justice and the drama that preceded his confirmation. A vacancy on the Court in the last year of a presidential term has occurred 24 times. The Senate confirmed the nominees of those presidents in 21 of those instances and denied confirmation in the other three. Never had the Senate denied a confirmation hearing, however, prior to Judge Merrick Garland's nomination. That historic event precipitated the nomination

and confirmation of Justice Gorsuch, who is only 49. Chemerinsky described him as a self-avowed originalist and textualist—a conservative in the mold of the late Justice Scalia.

Chemerinsky pointed out that since 1960, the average age at which a Supreme Court justice has left the bench is 78. Three justices—Ginsberg, Breyer, and Kennedy—are older than 78. If any of them leave the bench during the current presidential term, Chemerinsky remarked, the result will be the most conservative Court in many years.

The remainder of the presentation reviewed significant decided and pending cases from the Court's 2015-16 and 2016-17 terms, in the broad categories of criminal procedure, constitutional rights, civil rights statutes, and court procedure and jurisdiction. Here are some highlights:

Criminal procedure

The Court continued to narrow the reach of the Fourth Amendment, holding by a 5-3 vote in *Utah v. Streiff*, --- U.S. ----, 136 S.Ct. 2056, 195 L.Ed.2d 400 (2016), that discovery of a valid, pre-existing, and untainted arrest warrant was a “significant intervening event” that attenuated the connection between an unconstitutional investigatory stop and the evidence seized incident to a lawful arrest on the warrant. The dissenting opinions by Justices Sotomayor and Kagen focused on the impact of the ruling in communities of color.

On other fronts, however, criminal defendants did not fare badly. In *Welch v. U.S.*, --- U.S. ----, 136 S.Ct. 1257, 194 L.Ed.2d 387 (2016), the Court by a 7-1 vote (Justice Thomas dissenting) mandated retroactive application of its earlier ruling (*see Johnson v. U.S.*, 576 U.S. ----, 135 S.Ct. 2551, 192 L.Ed.2d 569 (2015)) that the definition of a prior “violent felony” in the residual clause of the Armed Career Criminal Act was unconstitutionally vague under due process principles. This ruling portends a significant increase in § 2255 filings.

In *Williams v. Pennsylvania*, --- U.S. ----, 136 S.Ct. 1899, 195 L.Ed.2d 132 (2016), a 5-3 Court found a due process violation when the chief justice of the state supreme court, who as a district attorney has approved seeking the death penalty for the defendant, participated in review of a habeas petition that reinstated the death penalty. The Court held that harmless error analysis was inapposite even though the vote in the state supreme court had been unanimous.

In *Foster v. Chatman*, --- U.S. ----, 136 S.Ct. 1737, 195 L.Ed.2d 1 (2016), the Court, again with only Justice Thomas dissenting, upheld a *Batson* challenge and found that the prosecutor had purposefully discriminated against African-Americans in jury selection, despite non-racist explanations offered for peremptory challenges against all four prospective African-American jurors. After the state supreme court affirmed the conviction, a public records request unearthed the prosecutor's file, which clearly contradicted the proffered explanations for the strikes. And in *Pena-Rodriguez v. Colorado*, --- U.S. ----, 137 S.Ct. 855, 197 L.Ed.2d 107 (2017), where two jurors provided affidavits that a third said the defendant was guilty because he was Mexican, the Court held 5-3 that the no-impeachment rule must yield to the Sixth Amendment's jury trial guarantee.

Constitutional rights

Two pending First Amendment free speech cases will probably go in opposite directions, Chemerinsky predicted. In *Lee v. Tam*, 808 F.3d 1321 (Fed. Cir. 2015), *cert. granted*, --- U.S. ----, 137 S.Ct. 30,

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Five Years Later: Perspectives on the Anniversary of the Sikh Temple Hate Crimes

Attorney James L. Santelle, Herbert Smith Freehills

In the five years since the cataclysmic and shattering violence at the Gurdwara in Oak Creek, the Sikh Community—locally, nationally, and worldwide—has responded with equal doses of humanity, forgiveness, educational initiative, and community engagement. It has done so with a renewed sense of commitment, first articulated by Guru Nanak Dev in the early 16th Century and animated in the 21st Century by the memory of their martyred sister and brothers—Bibi Paramjit Kaur, Sardar Satwant Singh Kaleka, Bhai Sita Singh, Bhai Prakash Singh, Bhai Ranjit Singh, and Sardar Suveg Singh Khattrā—to service, sharing, equality, peace, and, most importantly, transcendent optimism and abiding joy (“Charhdi Khala”).

To promote those missions, area congregations of Sikh adults and youth have been hard at work—another fundamental tenet of their faith—in honoring the memories and revering the lives of those lost, and healing the injuries, physical and psychological, suffered by many others. In ways dramatic and bantam, visible and unseen, Sikh populations in Brookfield, Oak Creek, and other communities have also reaffirmed their important place in our state and our country by preparing lunches for the hungry and the homeless, educating public officials and law enforcement on the fundamental trappings of their faith, organizing blood donation drives in critical times, and developing new curricula for our schools on the history and meanings of Sikhism.

Signaling their emergence as never before into the understanding and the embrace of all Americans, Sikhs have created local and national programs such as “Serve 2 Unite,” “The Sikh Project,” and “We Are Sikhs/The Sikh Campaign” to communicate who Sikhs are, what they believe, and how they have helped to create and continue to shape America and many other nations. In the past five years, inspired and inspiring groups such as the Sikh Coalition, United Sikhs, and SALDEF (Sikh American Legal Defense and Education Fund) have undertaken not only to confront the hatred and confusion that broke the light and learning of those gathered at the Sikh Temple of Wisconsin on Sunday, August 5, 2012, but also to accomplish justice for many others who have similarly been victimized by physical and verbal violence in Olathe, Kansas; Kent, Washington; Richmond, California; and New York City as recently as February, March, April, and May of this year.

Our local legal community—among many others in health care, education, law enforcement, and commerce—has partnered with Sikh leadership, and especially the family members of the Gurdwara shooting victims, to wrestle with and resolve thorny challenges in immigration, property rights, tort claims, and access to social services. Among those lawyers (first recognized on the second anniversary of the violence and in many instances continuing to provide advocacy and counsel) are Sklkime Abduli, Priya Moti Bhatia, Kelly S. Chenhalls, Laura J. Fernandez, Thomas C. Hochstetter, Gail K. McCarthy, Jennifer L. Nissen, Davorin J. Odrčić, Maria T. Ryan, Jessie Schreier, Bruce A. McIlroy, and Brent D. Nistler.

Capturing and describing all of that will be central to this year’s reflective and solemn but simultaneously re-commissioning observance on August 4, 5, and 6 in southeastern Wisconsin and worldwide. As in past years, the tragedy of early August of 2012 will be recounted—not only to ensure that our history, however ugly and horrific, is remembered, but also to breathe new and sustaining life into the industries of Sikhs and non-Sikhs alike who anticipate what the first Guru envisioned—that is, communities where “caste-prejudices are shed ... because all human beings are equal.”

On the morning of Saturday, August 5, our community will convene at Oak Creek High School for the now-annual 6K “Charhdi Khala” Run and Walk in memory of those who died, and in charitable support of groups and associations that promote the kind of humble service that is the foundation of the Sikh faith. True to that mission, Saturday will also be a “National Day of Seva (Service),” organized by the Sikh Coalition and encouraged by other civil and human rights groups as a time of work to improve the lives of people of every faith, creed, nationality, heritage, race, ability, capacity, sexual orientation, gender identity, educational level, and economic status.

Due to the significance of the five-year commemoration, the congregations of area Gurdwaras will welcome visitors to the anniversary gatherings of that weekend, many of whom will join in the public and private reflections. Among those Gurdwaras will, of course, be the Oak Creek Gurdwara, where plans are enthusiastically underway to create a permanent, living, educational, and inspirational memorial to the events of August 5, and to increase the size of the parking lot to accommodate the many Americans who now make regular pilgrimages to the site of one of the nation’s most significant places of faith-related civil and human rights history.

It is in that place of worship that celebrants of the faith and their supportive companions will also join in the traditional Sikh hymns (“kirtans”) of contemplation and joy, receive the sanctified offering of sweet pudding (“prashad”), and hear the lessons and the aspirations of the Granth Sahib—that is, the sacred scripture of the faith and the embodiment of the living tenth Guru. Like many other foundational books of faith among the world’s great religions, the Granth Sahib is written largely in poetic form and extols the virtues of community service, self-discipline, honest relationship, gender equality, faith inclusion, justice delivery, and, above all, respect for the wellness of all of humanity.

On August 5, 2017, and on all other days of the year, our common calls to unity, inclusion, understanding, and welcome are captured in the Guru’s words: “All have we made our loving friends, and from friends of all are we grown.”

More information about the commemorative events and observances in early August in Oak Creek and Brookfield can be viewed at <http://sikhtempleofwisconsin.com>, <http://srsowfi.org>, and www.chardhikala6kwi.org.

James L. Santelle served as the presidentially-appointed United States Attorney for the Eastern District of Wisconsin from 2010 to 2015. In that capacity, he oversaw the criminal investigation, victim and witness support, and community and public engagement initiatives of the United States Department of Justice following the hate crimes violence at the Gurdwara in Oak Creek.

Milwaukee Bar Association

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The Visitor continued from p. 19

When Julie did not come the following week, Annabelle's long-cultivated defense mechanisms kicked in. I guess she had a two-visit sentence, Annabelle silently concluded. Or maybe she just had something better to do.

But the next week, Julie came again.

"I got my earbuds back from the girl that took them," she reported.

"That's great," Annabelle responded, not being completely sure what earbuds were.

Julie nodded but did not come across as very happy. Maybe she really does not want to be here, Annabelle wondered to herself. "Is anything wrong?" she bravely asked Julie.

"I don't know ..." Julie trailed off.

"You can tell me. Whatever happens in assisted living stays in assisted living."

The slightest sign of a smile appeared on Julie's face.

"I don't know—I guess, I guess I don't feel like I'm going anywhere."

"What do you mean?"

"With my life. I don't want to end up like my parents trapped in boring, dead-end jobs they hate, with no hope of things ever getting better."

"But you're in school, getting an education. Your whole life is in front of you, and I'm sure you will have lots of choices."

"Yeah, maybe, but I haven't done very well in school. The guidance counsellor says I don't apply myself enough. But there's no point in it."

"Why do you feel that way?"

"Because the ones who succeed are born smarter, or have more money or know important people who can give them an advantage."

Again Annabelle felt a sense of disappointment—that emotion that she thought had moved on long ago but was now like the party guest who refuses to accept that it's time to go home. And right behind that was another feeling that had long gone AWOL: compassion.

"That's crazy," she said, surprising herself with her directness. "If you put your mind to it, you can do anything."

"How do you know?" Julie countered.

"Because I was there once also," Annabelle replied. "When I started out, I had a dream. But in what I wanted to do, there were almost no women who did that, or who were encouraged to do that. My own family told me not to do it, that the odds were too high, that I would be disappointed, and—worst of all—that maybe I didn't have what it took to succeed."

Julie hung her head down and nodded. Annabelle reached for her walker next to her chair, unfolded it and stood up.

"I think we need a nice cup of tea," she said.

Heading Upstairs

Annabelle's room was one floor above. As they rode the methodical elevator upward, Julie noticed the bright green tennis balls that had been sacrificed to smooth the glide of Annabelle's walker, foregoing a career on the court for impalement at the bottom of the device's rear, wheel-less legs.

Annabelle's door had her name beside it, and hanging below the peephole was a small, pretty arrangement of artificial flowers. Annabelle

fumbled through a purse congested with facial tissues, finally fishing out her key.

Her room was just as Julie expected—immaculate, sunny and decorated with more photographs than she had ever seen in any frame store.

Most of Annabelle's pictures seemed to be of family, but there were a few in a small collection from her school days.

"In my high school, there were just about as many girls as boys. That was good. But in college, we were definitely a small minority. And in law school—well, you really had to look carefully to find us."

So Annabelle had been a lawyer, Julie thought. Maybe that was why she knew so much.

"That must have been scary," Julie suggested.

"It was," Annabelle agreed. "But we women stuck together and supported each other. I'm not sure I could have been successful in law school without that."

"Did you work as a lawyer after you graduated?"

"I did, but getting a job was not easy. Back then, a lot of firms would not hire a woman lawyer. But I got lucky, and found a top firm that took me on."

"Wow, you were really ahead of your time."

"I didn't think of it that way. I was not looking to stand out or break through any walls."

"Did you like it there?"

"I did for the most part. But although most of the other lawyers accepted me as an equal, some never could. I worked very hard and made many sacrifices, including in my personal life. Ultimately, several years later I ended up becoming the firm's first female partner."

"That's fantastic," Julie exclaimed.

"It was great, although even then I still sensed some resentment. But I dealt with it, and over time I sensed it less and less."

"Julie, the point is you can never sell yourself short. Nothing is impossible if you really want it and if you are willing to commit yourself to it completely, with hard work, time and sacrifices. It's not easy, but I think you owe it to yourself to try."

Julie nodded. It was a much-appreciated kick in her motivational pants. "Why did you become a lawyer?" she asked. "Was it the money?"

Annabelle smiled. She was sure Julie would be amazed if she knew how little she was paid when she started.

"That's a good question. I had two reasons. The first was that I was fascinated by the law—that there was a system that took all the people there are in this town, or this country, or this world, and tried to the extent possible to allow them to live together and pursue their goals and happiness in a reasonable manner. And that when someone broke the rules, that the situation would be assessed fairly, and that where wrongdoing was found, the person who was hurt could expect and would receive justice. I was also intrigued by the way the law could evolve as circumstances evolved, as new issues arose and new situations and technologies appeared. At the very least, I was certain I would never be bored."

"But for me there was a second and probably even more important reason. I needed to find something that allowed me to help others. Being a lawyer is in some ways like being a doctor or a nurse, or a teacher, or a police officer, firefighter or EMS technician. You encounter

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Pro Bono Corner



The Pro Bono Corner is a regular feature spotlighting organizations throughout the Milwaukee area that need pro bono attorneys. More organizations looking for attorney volunteers are listed in the MBA's Pro Bono Opportunities Guide, at www.milwbar.org.

In celebration of the laws that protect our rights and liberties, the Milwaukee Bar Association hosted two free legal clinics to commemorate Law Day. Volunteer attorneys gave free legal advice to those seeking assistance at Center Street Library and Central Library on Saturday, April 29.

Volunteer attorneys are always needed for this annual event. If you are interested in participating next year and receiving *pro bono* hours for CLE credit, please contact Chronda Higgins at 414-276-5932 or chiggins@milwbar.org.

The Visitor continued from p. 22

people who are at an extremely difficult time or circumstance in their life, who feel like they are all alone, and who look to you to help them somehow get through it. As a lawyer, I had clients who found themselves at the end of their rope, in desperate and seemingly hopeless situations. I comforted and stood by all of them, and fought with everything I had for their rights."

Julie was riveted by Annabelle's words. "I, I would like to do that," she said, swallowing audibly, adding, "to have the power and opportunity to make a difference in people's lives."

"It is a kind of power," Annabelle agreed, "but, as they say, with power comes great responsibility. I've held in my hands the careers, livelihoods, futures and freedom of clients who depended on me. The stress of that enormous responsibility never really goes away, and it probably never should go away."

Annabelle looked at her clock. "It's nearly five p.m., and as you may know, around here that means dinner time."

"I've really enjoyed our talks," Julie said. "I was only required to come here three times, but if it's okay with you I'd like to come back from time to time."

"I would like that very much," Annabelle replied.

Julie waved as she headed out the door of Annabelle's room. Annabelle sighed and closed the door.

Annabelle guided her walker toward her closet and opened the door. There, among the outfits that had been pardoned from their confinement in the storage unit she rented in town, was the long black robe she had worn when she retired from the bench. She ran her fingers softly down one of the sleeves, as a flood of recollections and accomplishments flowed through her mind.

I think I'm going to look out for this girl, Annabelle decided.

She closed the closet and turned toward the door of her room, through which she heard the muted but unmistakable thunder of rubber-soled shoes, cane and walker leg tips, and, yes, tennis balls, as they made their way to a dining room full of steaming meat loaf, chicken soup and shared experiences.

Lawrence Savell is a lawyer with Herbert Smith Freehills in New York City. He can be reached at lawrence.savell@hsf.com.

Did You Know?

Wisconsin lawyers can now claim up to six CLE credits for providing *pro bono* legal services. Under Chapter 31 of the Supreme Court Rules, lawyers are required to obtain and report at least 30 hours of CLE credits, including three hours of ethics credits, in each two-year reporting period. Beginning January 1, 2017, Wisconsin lawyers can claim one hour of CLE credit for every five hours of *pro bono* work in qualified *pro bono* programs, up to a maximum of six credits per reporting period. A lawyer who provides at least 30 hours of qualifying *pro bono* legal services in a reporting period can claim six hours of CLE credit. Not every type of *pro bono* work under the new rule qualifies for CLE credit. Learn what qualifies for credit here.

Milwaukee FCC Office continued from p. 17

rule that requires an attempt to settle before court. Due to volume, all post-judgment stipulations must be submitted using CCAP Forms FA-604A and FA-604B. Also, be civil and take a problem-solving approach to issues.

All the commissioners agree that their sense of connection and teamwork helps them ride the rapids of the high-volume, high-conflict work in the family court commissioner's office.

Milwaukee FCC by the numbers

10 full-time commissioners:

Family Court Commissioner:

Ana Berrios-Schroeder

Deputy Family Court Commissioner:

David Pruhs

Assistant Commissioners:

Susan Callies

Sheila Hill-Roberts

Catherine Kendrigan

Jason Mishelow

Janice Rustad

Rauly Sandoval

Nancy Sturm

Dean Zemel

7 senior clerical staff:

1 paralegal

1 mediation coordinator

3-4 bailiffs

6 deputy court clerks

Caseload:

35,000 hearings in 2016

8,000 paternity cases in 2016

2,200 post-judgment stipulations processed per year

Only 4% of cases are certified to judges

Lots of celebrations

Chemerinsky continued from p. 20

195 L.Ed.2d 902 (Sept. 29, 2016), the Court appears poised to affirm a ruling that the disparagement provision of the Lanham Act, which authorizes denial of trademark registration when the mark may disparage persons, institutions, beliefs, or national symbols, is content-based regulation and therefore invalid under the Free Speech Clause. In *Packingham v. North Carolina*, 368 N.C. 380, 777 S.E.2d 738, cert. granted, --- U.S. ----, 137 S.Ct. 368, 196 L.Ed.2d 283 (Oct. 28, 2016), a person on a state registry of sex offenders challenged a criminal statute prohibiting “access” to a wide array of websites—including Facebook and YouTube—known to allow minors to have accounts. Chemerinsky noted that the Court usually defers to the government in such matters. [Chemerinsky correctly predicted the result in the trademark case, *Matal v. Lee*, 136 S.Ct. 1744, but not the *Packingham* case, 137 S.Ct. 1730 (2017).]

In the realm of the Free Exercise Clause, a court of appeals decision upholding denial of a government grant to a parochial school for a safe-landing playground surface will probably be reversed 5-4, according to Chemerinsky. *Trinity Lutheran Church of Columbia, Inc. v. Pauley*, 788 F.3d 779 (8th Cir. 2015), cert. granted, --- U.S. ----, 136 S.Ct. 891, 193 L.Ed.2d 784 (Jan. 15, 2016). [Chemerinsky’s prediction was correct (2017 WL 2727410 (June 26, 2017)). Two justices partially concurred, one concurred in the judgment, and two dissented.]

In *Evenwel v. Abbott*, --- U.S. ----, 136 S.Ct. 1120, 194 L.Ed.2d 291 (2016), which Chemerinsky considers one of the most important decisions of the 2015-16 term, the Court unanimously held that the “one-person, one-vote” principle under the Equal Protection Clause allows states to use total population, rather than eligible voters, to apportion state legislative districts. But the Court left for another day the question whether apportionment using eligible voters is unconstitutional.

On the abortion rights front, Chemerinsky noted that 19 states adopted 64 new statutes restricting abortion in 2016 alone. *Whole Women’s Health v. Cole*, --- U.S. ----, 136 S.Ct. 2292, 195 L.Ed.2d 665 (2016), involved a challenge to a Texas law that required doctors to have admitting privileges at a hospital within 30 miles of where an abortion is performed, and required abortion facilities to be surgical-level facilities. The Court, by a 5-3 vote, struck down the law as an undue burden on a woman’s right to abortion. The case is only the second (the other being *Planned Parenthood v. Casey*) in which Justice Kennedy voted to strike down an abortion restriction. Had he not, the law would have stood under an equally divided Court, and the vast majority of abortion facilities in Texas would have closed. Since the decision, numerous other abortion restrictions have been struck down.

Justice Kennedy’s vote was also pivotal in *Fisher v. University of Texas, Austin*, --- U.S. ----, 136 S.Ct. 2198, 195 L.Ed.2d 511 (2016), where the Court upheld by a 4-3 vote the university’s affirmative action program. The program used race as one of seven factors in 25% of the incoming class. Justice Kennedy, who authored the opinion, had never previously voted to uphold an affirmative action in his 28 years on the Court.

In *Murr v. Wisconsin*, 359 Wis.2d 675, 859 N.W.2d 628 (2014), review denied, 2015 WI 47, 366 Wis. 2d 59, 862 N.W.2d 899, cert. granted, --- U.S. ----, 136 S.Ct. 890, 193 L.Ed.2d 783 (Jan. 15, 2016), the Court agreed to review an unpublished Wisconsin Court of Appeals decision on the issue of whether contiguous parcels under common ownership are considered as a whole under a regulatory takings analysis. [The court answered “yes,” ruling in favor of the government. (2017 WL 2694699 (June 23, 2017)).]

Civil rights statutes

In *Manual v. City of Joliet*, --- U.S. ----, 137 S.Ct. 911, 197 L.Ed.2d 312

(2017), a detainee accused of possessing “ecstasy” pills, which were in fact vitamins, sued for wrongful detention under 42 U.S.C. § 1983. The Court, over two dissents, held that the detainee stated a claim for unlawful detention notwithstanding a judge’s approval of an arrest warrant. Because the judicial determination of probable cause was allegedly based solely on fabricated evidence, it did not expunge the Fourth Amendment claim.

In *Bank of America Corp. v. City of Miami*, --- U.S. ----, 137 S.Ct. 1296, --- L.Ed.2d ---- (2017), a predatory lending case brought by the city under the Fair Housing Act, Chemerinsky represented the city. At the time of his presentation, no decision had been issued, and he surmised that an evenly divided Court might defer the case to the following term. [A 5-3 decision issued, however, less than a week later, holding that the city has standing to sue for predatory lending practices under the FHA, but that it must prove the banks’ misconduct was a proximate cause of its injuries, not merely that those injuries were “foreseeable results” of the misconduct.]

Court procedure and jurisdiction

In *Goodyear Tire & Rubber Co. v. Haeger*, --- U.S. ----, 137 S.Ct. 1178, 197 L.Ed.2d 585 (2017), consumers settled a products liability action and then learned that Goodyear had withheld documents in discovery that revealed pertinent test results. The Court reversed and remanded a \$2.7 million sanction against the manufacturer, holding that a federal court’s inherent authority to sanction a litigant for bad-faith conduct is limited to the attorney fees the innocent party incurred solely because of the misconduct.

Bristol-Myers Squibb Co. v. Superior Court of California, 1 Cal. 5th 783, 206 Cal.Rptr.3d 636, 377 P.3d 874 (2016), cert. granted, --- U.S. ----, 137 S.Ct. 827, 196 L.Ed.2d 610 (Jan. 19, 2017), presents the question of whether a nonresident plaintiff’s claims arise out of or relate to a defendant’s forum activities when there is no causal link between the defendant’s forum contacts and the plaintiff’s claims. The case, argued the day after Chemerinsky’s presentation, will review the state supreme court’s finding of that no general jurisdiction exists but that specific jurisdiction does. Chemerinsky noted that personal jurisdiction has been restricted in recent years, in terms of both general and specific jurisdiction. [The Court held that due process did not permit exercise of specific personal jurisdiction (137 S.Ct. 1773 (2017)).]

Open Meetings continued from p. 9

When it comes to the open meetings law, formality trumps familiarity in just about every case.¹⁵

Douglas H. Frazer, Northwestern 1985, is a shareholder with DeWitt Ross & Stevens in its Metro Milwaukee office.

¹Wis. Stat. § 19.81(1).

²Wis. Stat. § 19.82(1).

³Wis. Stat. § 19.82(2).

⁴See *State ex rel. Newspapers Inc. v. Showers*, 135 Wis. 2d 77, 102-03, 398 N.W.2d 154, 165-66 (1987).

⁵*Id.*

⁶69 Wis. Op. Att’y. Gen. 143 (1980).

⁷Wis. Stat. § 19.84.

⁸See 65 Wis. Op. Att’y. Gen. 250 (1976).

⁹Wis. Stat. § 19.84(3).

¹⁰Wis. Stat. § 19.84(2).

¹¹See *State ex rel. Buswell v. Tomah Area School District*, 2007 WI 71, 301 Wis. 2d 178, 732 N.W.2d 804.

¹²*Showers*, 135 Wis. 2d at 92.

¹³Wis. Stat. § 19.85.

¹⁴Wis. Stat. § 19.84(2) (“The public notice of a meeting ... may provide for a period of public comment, during which the body may receive information from members of the public.”) No right exists under the open meetings law for the public to speak or participate in a meeting.

¹⁵For fuller discussions on the subject, see Block, “An Intro to Understanding Wisconsin’s Open Meetings Law,” *Wisconsin Lawyer* (Dec. 2015); Block and Rutledge, *The Wisconsin Public Records and Open Meetings Handbook*, State Bar of Wisconsin PINNACLE® (5th ed. 2016); Wis. Att’y Gen., *Wisconsin Open Meetings Law Compliance Guide* (2015); and Silverman, “Understanding and Complying with Wisconsin’s Open Meetings Law,” *The Municipality* (July 2010).

Joseph Diedrich Wins Eastern District of Wisconsin Bar Association's Annual Evans Writing Competition

The late Judge Terence T. Evans of the U.S. Court of Appeals for the Seventh Circuit was famous for his vibrant opinions, chock full of witticisms, sports analogies, popular culture references, and intriguing trivia, all seamlessly integrated into his legal analysis. In honor of Judge Evans' prodigious talent and boundless wit, and to encourage those with similar minds, the Eastern District of Wisconsin Bar Association annually sponsors a writing competition for law students. Entries must be original works and must include words in the form of prose, poems, moot court briefs, resumes, or songs. The works must relate in some way to the law. This year's winning entry was submitted by Joseph Diedrich, who recently graduated from the University of Wisconsin Law School and is now employed in the Madison office of Husch Blackwell.

[Read the full entry here.](#)

Keynote Speaker for 2017 Law & Technology Conference Announced

November 16, 2017
8:00 a.m. - 5:00 p.m.
Italian Conference Center



Dawn Cappelli, CISSP, is VP and CISO at Rockwell Automation. She is responsible for the company's global information security program. She also co-authored the book *The CERT Guide to Insider Threats: How to Prevent, Detect, and Respond to Information Technology Crimes (Theft, Sabotage, Fraud)*, and is

on the RSA Program Committee and DSAC Leadership Council for Intelligence and Threats. [Read more about her here.](#)



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