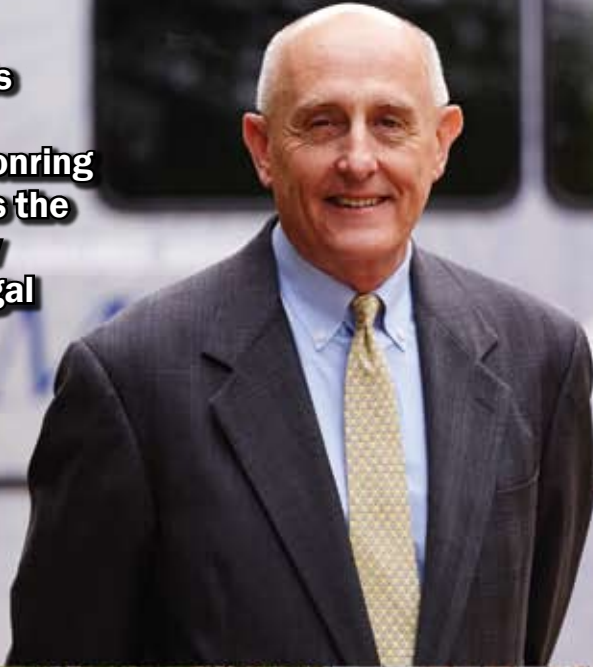




Fall 2013 • Volume 3

Messenger

**Justice Hits
the Road:
Michael Goring
Showcases the
MJC's New
Mobile Legal
Clinic Bus**



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Regular Features

- 4 Letter From the Editor
- 5 Volunteer Spotlight
- 5 Member News
- 6 Message From the President
- 7 CLE Calendar
- 8 New Members
- 21 *Pro Bono* Corner

Be Part of the Messenger

Please send your articles, editorials, or anecdotes to editor@milwbar.org or mail them to Editor, Milwaukee Bar Association, 424 East Wells Street, Milwaukee, WI 53202. We look forward to hearing from you!

If you would like to participate, we have seats available on the *Messenger* Committee. Please contact James Temmer, jtemmer@milwbar.org. The *MBA Messenger* is published quarterly by the Milwaukee Bar



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Contents

Fall 2013 • Volume 3

In This Issue:

- 8 MJC Mobile Legal Clinic Hits the Road
by Justin A. Metzger, Milwaukee Justice Center
- 9 Courts Bounce Back From Major Summer Fire
by Honorable Jeffrey A. Kremers, Chief Judge, Milwaukee County Circuit Court
- 10 Picture This: National Labor Relations Board's Division of Advice Wants to Sue Employer for Issuing Social Media Policy With Photo/Video Ban
by Attorneys Mitchell W. Quick and Steven A. Nigh, Michael Best & Friedrich
- 11 Supreme Court's Same-Sex Marriage Ruling Preempts Legislative Process
by Attorney Christine M. Flowers
- 12 25th Annual MBA Foundation Golf Outing
- 13 MJC 5K Gets Boost from Perfect Weather
by Justin A. Metzger, Milwaukee Justice Center
- 15 Reducing the Impact of Recusal on the Functionality of the Supreme Court
by Attorneys Jeremy P. Levinson and Richard J. Cayo, Halling & Cayo
- 16 In Memory of Ross Kodner, a Legal Technology Pioneer
by Attorney Nerino J. Petro, Jr., State Bar of Wisconsin
- 16 MJC Expands Service with New Foley Inns of Court Partnership
by Justin A. Metzger, Milwaukee Justice Center
- 17 Sponsorships and Donations Urgently Needed for 2014 National High School Mock Trial Tournament in Madison
- 18 The Rime of the Ardent Gunner
by Michael Solberg
- 19 The Milwaukee Bar's Gettysburg Hero
by Attorney Hannah C. Dugan



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Letter From the Editor



Charles Barr, Editor

require assistance navigating the court system but have no access to private counsel, to show up and get the help they need.

‘Fraid not. Yes, they do show up at the courthouse—well over 10,000 of them got help there last year, and the MJC is on track to serve even more this year. But still thousands more, who have equal if not greater need of assistance, cannot get there.

When you or I need something that requires a trip to any other part of the community, from Franklin to Fox Point or beyond, we simply jump into a vehicle (perhaps one of several at our disposal) and drive there. Within very broad limits, we do so at our convenience. To boot, we take this ability completely for granted.

Not so for many of our neighbors. Imagine that a vehicle of your own, or at least one that runs, is out of economic reach. Imagine that your friends and relatives are in the same straits; you have no ride. You live far from a bus line, and a cab is financially out of the question. You care for children, elders, or sick or disabled persons, with no backup. Or you are elderly, sick, or disabled yourself. Or you cannot get time off from a job on which you are absolutely dependent for next week’s groceries and next month’s rent. This is reality for many would-be Milwaukee Justice Center clients, for whom an excursion downtown is a complex, expensive, and ultimately impractical undertaking.

The MJC’s Mobile Legal Clinic, a project of Marquette University Law School and the MBA that sprang into action Saturday, September 21, brings volunteer lawyers and law students to economically depressed neighborhoods, thereby making legal assistance available to those residents who cannot feasibly get to the courthouse. This is not a frill or a public relations gambit. It is the vital next step in accomplishing the MJC’s mission.

That is why the Mobile Legal Clinic bus graces our cover, along with Mike Gonring, the inimitable champion of community service in whose honor Frank Daily and Julie Ebert made the generous donation to purchase the bus and fund the project. See page 8 for more

“Justice for All” doesn’t come easy. You’d like to think that once you’ve established the Milwaukee Justice Center in the county courthouse, all you have to do is wait for the thousands of people in our community, who

about this groundbreaking expansion of the Milwaukee Justice Center.

As for the rest of the *Messenger*, behold a seasonal cornucopia of legal news, opinion, history, and humor. I’m excited about it, and I’m not a very excitable guy.

We have an article on the Wisconsin Supreme Court’s curious lack of an established procedure to permit decision of cases when disqualification or recusal of one or more justices creates deadlock or lack of a quorum. Our guest editorialist is an attorney and journalist who sounds a cautionary note about the U.S. Supreme Court decision striking down the Defense of Marriage Act. Our friends at Michael Best chip in with a “hard law” articles on the National Labor Relations Board’s critical eye towards social media policies in the workplace.

Chief Judge Jeff Kremers reports on the court system’s recovery from the fire that ravaged the courthouse, Safety Building, and Criminal Justice Facility on July 6. The Milwaukee Justice Center describes its expanded family law services, and a successful third annual edition of the 5K Run for Justice. We have photos from the run and from the MBA Foundation’s August golf outing, which also benefits the MJC. We remember the late Ross Kodner, a tireless innovator in the field of law office technology.

Hannah Dugan is back with a profile of a once prominent, but now largely forgotten, Milwaukee lawyer who, among numerous feats, led a Wisconsin brigade at the Battle of Gettysburg. The *Messenger’s* first-ever foray into poetry is the winning entry in this year’s Terence T. Evans Humor and Creativity in the Law Competition, sponsored by the Eastern District of Wisconsin Bar Association.

We hope you enjoy this edition of the *Messenger*, and that you have settled into whatever back-to-school and back-to-work routines apply to you and yours. Another carefree summer is gone; get over it. Autumn in Wisconsin has its own rewards, and we won’t think about what comes next. But if you were to think about that, can you think of a better indoor activity than banging out an article, anecdote, or even a poem for the *Messenger*? (Well, okay, but you could still do something for the *Messenger*, right?)

—C.B.

Volunteer Spotlight



This issue's volunteer spotlight is a dual one, illuminating the co-chairs of the MBA Foundation Golf Outing. The golf outing had a record-breaking year, raising over \$30,000 for the Milwaukee Justice Center in August.



First in the spotlight is Attorney Ben Wagner. Ben attended Emory University and the University of Wisconsin Law School. He practices with Habush Habush & Rottier as a trial lawyer representing individuals harmed by negligence or other wrongdoing.

Ben is very passionate about raising awareness and funds for the Milwaukee Justice Center. He feels that the golf outing is an opportunity to bring a great group of lawyers and judges together for a wonderful day of golf, camaraderie, and fun, while at the same time harnessing everyone's collective energy and

motivation to generate the funds that enable the Justice Center to operate.

Ben has been a co-chair of the golf outing for the past three years. He is also on the Board of the Legal Aid Society of Milwaukee, Discovery World, Safe & Sound (for which he co-chairs fund development), Jewish Family Services (also serving as secretary and co-chair of fund development), and the Medical College of Wisconsin's Neuroscience Advisory Board.



Aaron T. Olejniczak

Next in the spotlight is Attorney Aaron T. Olejniczak. Aaron is an intellectual property attorney at Andrus Intellectual Property Law. He assists clients in protecting their intellectual property, including patents, trademarks, copyrights, and trade secrets,

as well as in domestic and international patent prosecution.

Aaron is an Eastern District of Wisconsin Bar Association Board member, and became involved in the MBA's Golf Committee in 2011. Aaron joins Ben in the sentiment that the most important aspect of the MBA's volunteer programs is raising funds for the Justice Center, which provides legal services to those who might not otherwise have access to them.

Aaron feels that it is imperative that every person have equal access to justice. As he also points out, attorneys need to recognize that personal relationships are important, not only with clients, but with other attorneys, as well. The MBA Foundation's golf event provides a great venue for enhancement of those relationships.

In addition to his work with the MBA, Aaron is a Seventh Circuit Bar Association Facilities Liaison, and serves on the School Committee of St. Francis Borgia School in Cedarburg.

Thank you for your hard work, and congratulations on a record-setting golf outing, Ben and Aaron!

Member News



Grzeca Law Group, a full-service immigration law firm, announced the addition of **Amber Raffett** as an associate attorney in its Madison office.

Ann S. Jacobs announced that she has formed a new firm, Jacobs Injury Law, at 201 North Milwaukee Street, Suite 5B, in Milwaukee. She will continue to practice in personal injury, automobile accidents, nursing home neglect and abuse, and medical malpractice.

Peckerman, Klein & Van Kirk has announced that **Elizabeth R. Gebarski** has joined the firm as an associate.



Elizabeth R. Gebarski

Quarles & Brady announced that **Kimberly Leach Johnson** has been selected as the firm's next chairperson effective October 1, 2013. **Fredrick G. Lautz** has been re-appointed as the firm's managing partner. **John Daniels** will serve as chairman emeritus of the firm.

The firm also announced that **Jennifer M. Jackson** has joined its Milwaukee office as an associate in the Corporate Services Practice Group, and **David R. Groose** has joined that office as an associate in the Public Finance Practice Group.



Jennifer M. Jackson



David R. Groose

Reinhart Boerner Van Deuren announced that shareholder **Albert S. Orr** has been elected to the firm's Board of Directors for a three-year term. Orr is co-chair of Reinhart's Business Law Practice and chair of the firm's Private Equity, Venture Capital and Corporate Finance Group.

The firm also announced that shareholder **Larri J. Broomfield** has been re-elected to the board, also for a three-year term. He is co-chair of Reinhart's Health Care Practice and a member of the firm's Business Law Practice.

The firm welcomed shareholder **Wendy S. Rusch** to its Trusts and Estates Practice.



Wendy S. Rusch

von Briesen & Roper announced the promotion of **Jason Fathallah, Sarah Platt, Doug Raines, Jessica Reginato, Rachel Schepp, Mark Schmidt, Anne Wal, James Wawrzyn** and **Brion Winters** to shareholders of the firm. Fathalla, Raines, Reginato, Schepp, and Schmidt are shareholders in the Litigation and Risk Management Practice Group; Platt in the Labor and Employment and School Law Sections; Wal in the Real Estate, Construction Law, and Banking, Bankruptcy and Business Restructuring Sections; Wawrzyn in the Business Practice Group; and Winters in the Banking, Bankruptcy, Business Restructuring, and Real Estate Practice Group. All practice in the firm's Milwaukee office.

Milwaukee Bar Association's

Law & Technology Conference
December 5, 2013



Message From the President



Attorney Beth E. Hanan, Gass Weber Mullins



After 20 years of sending children off to school, this autumn I haven't had to purchase a new backpack, pay dorm fees, or co-sign a lease. Who knew where sentiment could lurk?

But there remain plenty of newness and enthusiasm, as well as time-honored traditions, to be enjoyed. Read on.

If you attended the 25th Annual MBA Foundation Golf Outing in August, you probably have solidified your story about that great hole you played. And it's even more likely you are one of the folks who sponsored a golf hole, donated to the silent auction, or otherwise contributed to the almost \$30,000 raised that day to help fund operating expenses of the Milwaukee Justice Center. This event is critically important to ensure ongoing legal assistance at the MJC, and so everyone at the MBA Foundation, as well as the Milwaukee Justice Center, extends thanks. If you missed the golf outing, you'll want to rectify that omission next year. This year's committee of ten volunteers not only secured good golfing weather at the last minute, but they spiced up the raffle options measurably. The Packer tickets raffle package was a tremendous success. The only apparent downside is that my husband now holds me personally responsible for not winning this package for his Christmas gift. Alas.

August at the MBA started with the golf outing, and closed out with a breakfast for MBA section leaders. These long-time volunteers and eager newcomers have a palpable enthusiasm for presenting CLE programs in the coming year. Look for some creative, practical synergy in several jointly sponsored programs in the months ahead. Look also for reports from the newly formed Membership Committee, which will take a deeper look at membership trends and the changing needs of our membership, with the ultimate goal of serving you better and ensuring a vital MBA far into the future.

As the sounds of "potato-potato-potato" from the Harley anniversary event fade, the Mobile Legal Clinic revs up. "Road Lawyer" volunteers are needed to staff this mobile clinic one Saturday each month beginning in September. Leathers optional. Professional satisfaction, and client gratitude, virtually guaranteed.

Locally and nationally, court terms recently have resumed, and so too the MBA bench/bar committees are springing into action. These practice-based committees are your chance to work side by side with local judges on procedural issues facing the courts and those who appear before them. If you haven't gotten involved in one of these committees before, this just might be your year.

Another tradition of autumn is the State of the Court Luncheon. October 17 will mark the tenth annual event, an opportunity for the chief judge to describe current initiatives and issues facing the Milwaukee County Circuit Court. I'm confident that Chief Judge Kremers will devote part of his remarks to crediting the determined effort of court staff and other county workers to getting the courts back to full operational status as quickly as possible after the summer fire. The coordination involved and the selfless extra hours spent were substantial (see p.9). Another reason to attend the State of the Court Luncheon is to honor the recipients of our annual *Pro Bono Publico*

Awards. Come to congratulate your colleagues, and perhaps rekindle your own call to service.

So, schools are back in session, court terms are in full swing, and golf swings soon may taper off. If you aren't putting a child on a school bus, maybe you'll put yourself on the bus that is the Mobile Legal Clinic. Tradition, routine, and new opportunity abound. It's going to be a good autumn.

Upcoming Events

October 17

State of the Court Luncheon

October 24

Pro Bono Cocktail Reception

December 5

Law & Technology Conference

February 4

Judges Night



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CLE Calendar

Fall 2013

October 4, 2013

Bankruptcy Section

Dodge This: Defenses to Adversary Proceedings Seeking to Avoid Mortgages Under 11 U.S.C. §§ 544 and 547

This presentation will specifically address defenses and defense strategies in avoidance actions brought by trustees (or debtors attempting to stand in the shoes of trustees).
Presenters: Patrick Howell and Timothy H. Posnanski, Whyte Hirschboeck Dudek
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

October 11, 2013

Bench/Bar Probate Committee Annual Probate Seminar

Common Issues and Potential Solutions in Probate Matters

Capacity and undue influence issues relating to wills (to include will validity, copies of wills, multiple wills, and alterations to wills); summary settlements and summary assignments; and insolvent estate issues
Presenters: Richard Schauer, Richard Schauer Law Offices; James Collis, James Collis Law Office; Sara Eberhardy, Eberhardy & Eberhardy
12:30 – 1:00 p.m. (Lunch/Registration)
1:00 – 4:00 (Presentation)
3.0 CLE credits

October 16, 2013

Environmental Law and Real Property Sections

Vapor Intrusion: Dealing with Environmental and Real Property Transactional Issues Associated with Vapors from Soil and Groundwater Contamination

This presentation will discuss the Wisconsin Department of Natural Resources (WDNR) regulations and the environmental investigation and remediation procedures required by the WDNR for vapor intrusion associated with contaminated soil and groundwater, and how these issues are commonly handled in the context of real property transactions.
Presenters: John Osborne, Hydrogeologist/P.G.; and Bernard Fenelon, Hydrogeologist/P.G., GZA GeoEnvironmental, Waukesha
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

October 18, 2013

MBA Presents

Civil Litigation Today: a Practical Workshop

Motions in limine: an interactive demonstration; jury selection panel: an interactive forum; the art of opening statements; direct and cross-examination of an expert witness: a “real-life” example; the closing argument: a “real-life” case study presentation; courtroom ethics update
Presenters: Kelly Centofanti, Centofanti Law; and Michael Mesirow, Kasdorf, Lewis & Swietlik
8:30 - 9:00 a.m. (Registration/Continental Breakfast)
9:00 - 4:00 (Presentation)
12:15 - 12:45 (Lunch)
7.0 CLE credits including 1.0 ethics credit

October 21, 2013

Real Property Section

Oil and Gas Law Basics

Advising clients who have out-of-state oil and gas interests
Presenter: Doug Stern, DSternLaw
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

October 22, 2013

Elder Law Section

Insurance Products in Long-Term Care Asset Protection Planning

The inclusion of insurance products, such as life and long-term care insurance, in long-term care asset protection planning can be very valuable. Such products can provide an insured with more and better options for care at home, in assisted living, or in a nursing home, while at the same time preserving family assets for a surviving spouse and heirs. This presentation will discuss the options for such policies, as well as how they can be incorporated into long-term care asset protection plans.
Presenter: Peter J. Walsh, O’Neil, Cannon, Hollman, DeJong & Laing
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

October 23, 2013

Labor and Employment Law Section

Litigating in Wisconsin’s Unemployment Insurance Division

In record numbers, claimants who are denied unemployment insurance benefits request a formal hearing before an administrative law judge. Nick McLeod, who has litigated more than 125 cases in Wisconsin’s Unemployment Division since 2008, will present his key insights into the efficient preparation for and appearance at unemployment insurance hearings. Despite statutory limits on attorney fees, Attorney McLeod will reveal the

monetary benefits and distinct advantages to the practitioner who litigates unemployment insurance cases.
Presenter: Nicholas M. McLeod, Alan C. Olson & Associates
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

October 24, 2013

Taxation Section

Customs Import Compliance: Common Errors and Audit Strategy

Changes in U.S. Customs regulations and policy have transferred responsibility—and legal liability—for determining the value, classification, and entry requirements from Customs to the importer, while placing greater emphasis on enforcement through compliance assessment reviews, audits, and investigations. As a result, more and more importers will be faced with detailed reviews or audits from Customs. Will your clients be ready if Customs examines their in-house import compliance program? This presentation will present the most common import compliance errors and identify potential strategies to avoid making those errors commonly identified via audit.
Presenter: Jennifer Jin, Whyte Hirschboeck Dudek
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

October 25, 2013 Webcast (audio only)

Health Law Section

All Aboard the HIPAA Omnibus: What Health Care Entities Need to Know About Complying with the New Privacy and Security Regulations

This presentation will outline key components of the new HIPAA Omnibus Final Rule, including new consumer protections, expanded business associate liability, breach requirements, and new investigation and enforcement considerations. Presenters will guide attorneys that work with HIPAA-covered entities, business associates, and subcontractors through tips and requirements for complying with the new rules.
Presenters: Diane M. Welsh and Meghan C. O’Connor, von Briesen & Roper
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

continued page 10



Welcome New MBA Members!

- Priya Barnes
 Frederic Behrens, *Deloitte Tax*
 Kristopher Bolom
 Colleen Boyle, *Mallery & Zimmerman*
 Wyatt Dittburner, *Burbach & Stansbury*
 Mark Fetzko
 Emily Fumo
 Heidi Gabriel, *Deloitte Tax*
 Matthew Gensler
 Jeremy Hager, *Hager Law*
 David Hill, *Halling & Cayo*
 Kari Kastenholz
 Jessica Koo, *Koo Law Office*
 Dayna Lefebvre, *Becker, Hickey & Poster*
 Trevor Lippman, *O'Neil, Cannon, Hollman, DeJong & Laing*
 Maria Lopez, *Lopez and Soberalski Immigration Law*
 Matthew Ludden, *Godfrey & Kahn*
 Catherine Malchow, *Milwaukee County Circuit Court*
 Christopher Molnar, *Law Offices of Christopher F. Molnar*
 Christina Muehlmeier
 Alex Neuworth, *Foley & Lardner*
 Abbey Nickolie
 Daniel Peterson, *McNally Peterson*
 Jordan Primakow, *Halling & Cayo*
 Pamela Ritger, *Clean Wisconsin and River Alliance of WI*
 Joseph Russell, *vonBriesen & Roper*
 Christopher Schmidt

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
- Increase public awareness of the crucial role that the law plays in the lives of the people of Milwaukee County.

MJC Mobile Legal Clinic Hits the Road

Justin A. Metzger, *Milwaukee Justice Center*



The Milwaukee Justice Center took to the streets starting in late September, and is looking for volunteer attorneys who want to bring their talent to the community.

Using the popular and effective Marquette Volunteer Legal Clinic model, the Mobile Legal Clinic will offer the services of volunteer attorneys, aided by law students. These volunteers will provide brief legal advice on a variety of civil legal matters. The clinic will also provide assistance with family law forms.

The MJC Mobile Legal Clinic, a project of Marquette University Law School and the Milwaukee Bar Association, was made possible

by a donation from Frank Daily and Julie Ebert in honor of Michael Gonring of Quarles & Brady.

The MJC is looking for volunteer road lawyers to donate two hours of their time, from 10:00 a.m. to noon or noon to 2:00, one Saturday per month. The first outing occurred September 21 at the John C. Cudahy YMCA, 9050 North Swan Road. The same YMCA location will also host clinics on Saturday, October 19; Saturday, November 16; and Saturday, December 12.

Please contact Attorney Mary Ferwerda at mary.ferwerda@wicourts.gov for more information.

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* American Bar Association Standing Committee on Lawyers' Professional Liability. (2012). *Profile of Legal Malpractice Claims, 2008-2011*. Chicago, IL: Vail, Jason T. and Ewins, Kathleen Marie.

Courts Bounce Back From Major Summer Fire

Honorable Jeffrey A. Kremers, Chief Judge, Milwaukee County Circuit Court

On the afternoon of Saturday, July 6, a fire heavily damaged the electrical substation in the basement of the Milwaukee County Courthouse. Electrical power was lost in three buildings: the courthouse, the Criminal Justice Facility (CJF) that houses the jail, and the Safety Building. Power was maintained in the CJF with the use of emergency generators until a direct line to WE Energies was created to restore permanent power to the jail.

The courthouse suffered extensive smoke and debris damage. While all floors were affected to some degree, the worst damage was from the basement to the fourth floor. The Safety Building sustained significantly less damage but was left without any source of power. Given the fact that we run some level of court operations seven days a week, we had to make some quick decisions. We shut down the criminal in-custody intake court operations for the balance of Saturday and all of Sunday.

On Monday, July 8, we were able to reopen the CJF and resume very limited operations. The in-custody intake and preliminary hearing courts ran as scheduled. It is worth noting that only a few defendants failed to show up for their scheduled hearings. In addition, we used the courtroom in the CJF for domestic violence restraining order hearings.

On Wednesday, July 10, we reopened the Safety Building. The entire 250,000 square-foot building had been cleaned and the air quality tests had come back clear. Homicide and sexual assault courts were able to operate their calendars normally. The three domestic violence courts were moved from the courthouse to temporary locations in the Safety Building where they handled matters as scheduled. The rest of the criminal calendars normally in the courthouse were combined with other criminal dockets in the Safety Building. Through tremendous cooperation from the clerk of court and his staff, and also from lawyers, judges, commissioners, my staff, and litigants, we were able to handle all calendars at least for the purposes of maintaining jurisdiction and scheduling a next date.

In addition, we established a courtroom in the Safety Building for restraining orders, injunctions, other emergency matters, and weddings. The Clerk of Courts Office moved its base of operations from the courthouse to the Safety Building, as well. While temporary power had been restored to the Safety Building, it was somewhat tenuous, resulting in several additional outages.

Meanwhile, a massive cleanup of the 1,000,000 square-foot courthouse was proceeding apace. Restoration crews and facilities management people worked around the clock to give us back the use of the courthouse. Carpeting and ceiling tiles were removed from the first four floors, all surfaces wiped down, and electronics equipment cleaned. Extensive air testing was done before we were allowed back in the building. On July 15, just one week after the fire, we were allowed to reopen the family courts, the criminal courts, and the small claims court in the courthouse. The only court operations still restricted at that point were the civil and probate courts. We were able to conduct some probate matters in my conference room.

On July 22, we were able to reopen the civil and probate courts and resume "normal" court operations. As of today, all carpet has been replaced in the civil and probate courtrooms, new ceiling tiles

installed throughout much of the building, air ducts cleaned, walls painted in many areas, the list goes on.

I believe we have pretty much caught up with the backlog caused by the lost days, though not without a lot of hard work by people such as small claims court clerks Henrietta Jackson and Dyan Richter. They did an unbelievable job of working through the double calendars caused by the shutdown. They did it with grace and patience in the face of overcrowded and overheated conditions.

We do not have normal power restored to the courthouse and Safety Building, and will not until the end of the year. Although we must continue to be cautious in the use of power, the public should not notice any difference in the level of service.

I want to publicly thank Don Tyler, Gary Waszak, Julie Esch, Dennis Dietscher, David Crowley, Jim Sullivan, Russ Weber, Jerry Otto, Major Debra Burmeister, Deputy Dennis O'Donnell, David Budde, Tammy Krucynski, Jacqueline Thachenkary, Holly Szablewski, Paula Black, Anna Hodges, Bruce Harvey, Beth Perrigo, and countless others too numerous to mention, for their tireless and unrelenting efforts to get the Milwaukee County courthouse back on its feet and open to the public.

They sacrificed time with their families, working in a very hot, dirty, smelly environment, with the sole intent of restoring safe public access to the courts and county offices. They worked incredibly long hours and, because many are salaried, for no extra pay. I want the public to know what they have done. Their story has been left unreported by the media.

What they have in common is that most of them are Milwaukee County employees and the rest are state employees. Public employees have been subjected to a lot of unfair criticism lately. These employees, and many others including private contractors, worked under very trying circumstances to get the building open in less than two weeks. I have never seen anything like it. Nor have the private contractors on site.

Thank you.

You should also know that your elected officials, County Executive Chris Abele, County Clerk Joe Czarnecki, Clerk of Courts John Barrett, Treasurer Dan Diliberti, Register of Deeds John LaFave, and their staffs, department heads, and others have all gone above and beyond their normal responsibilities to work with county officials in relocating their offices to serve the public during this crisis.

I have not named everyone and for that I apologize, but there is simply not enough space. Innumerable judges, clerks, court reporters, and other county staff have been equally diligent, resourceful, and helpful in getting us up and running. I saw this building immediately after the fire, and the estimates of time to reopening were four to six weeks. We were able to resume criminal, family, and small claims court operations in one week.

We should all be extremely proud of the commitment of everyone who sprang into action to serve the citizens of Milwaukee County.

Picture This: National Labor Relations Board's Division of Advice Wants to Sue Employer for Issuing Social Media Policy With Photo/Video Ban

Attorneys Mitchell W. Quick and Steven A. Nigh, Michael Best & Friedrich

The National Labor Relations Board's Division of Advice (the Division) recently recommended that the Board issue a complaint against Giant Foods for implementing its social media policy without first bargaining with two unions, and for maintaining a social media policy that included unlawful provisions. Although the Division analyzed several social media policy provisions, its criticism of two provisions in particular—a ban on using photos and video of company premises, and restrictions on employees' use of company logos and trademarks—makes it very difficult for employers to protect their brands while at the same time complying with federal labor laws.

Giant Foods' social media policy forbade employees from using company logos, trademarks, or graphics without prior approval from the company. The policy prohibited employees from using photographs or video of the "Company's premises, processes, operations, or products" without prior approval, as well.

The Division concluded that these provisions were unlawful under the National Labor Relations Act (NLRA) and that the Board should issue a complaint against Giant Foods for implementing them. As employers are becoming keenly aware, the NLRA safeguards employees' right to engage in protected concerted activity. Such activity includes group discussions and some comments by individual employees that relate to their

wages, hours, and other terms and conditions of employment.

The Division concluded that banning employees from using company logos or trademarks was unlawful because: (1) employees should be allowed to use logos and trademarks in online communications, including electronic leaflets or pictures of picket signs with the employer's logo; and (2) those labor-related interests did not raise the concerns that intellectual property laws were passed to protect, such as a business' interest in protecting its trademarks from being used by competitors selling inferior products.

Additionally, the Division concluded that restricting employees from using photos and video of company premises unlawfully prevented them from sharing information about participation in protected concerted activities—for example, snapping a picture of a picket line.

Unfortunately, the Board's expansive view is likely to hamper companies' ability to prevent damage to their brands and reputations. Not allowing employers to ban the taking of videos and photos on their premises, or to restrict the use of company logos and trademarks, could lead to public relations nightmares such as the one Subway Foods recently endured after it was revealed that an employee posted a graphic picture on Instagram of his genitalia on a sub, with the tag line "I will be your sandwich artist today."

Given the prevalence of cell phones with photo and video capabilities, and the ease of uploading photos and videos to the internet, a company that cannot control its employees' use of those devices on their premises will be one bad employee decision away from public embarrassment.

What else can be gleaned from the *Giant Foods* Advice Memorandum? That the Board's General Counsel will continue to prod employers to eliminate blanket bans on certain kinds of employee conduct from their social media policies and to replace those bans with provisions that include specific examples of what employee conduct the policies prohibit. The Board and its General Counsel have previously found social media policies that restricted employee use of confidential information and complaints about an employer's labor practices to be unlawful; *Giant Foods* makes clear that the agency is also scrutinizing other kinds of policy provisions that potentially could infringe on an employee's right to engage in protected concerted activities.

Accordingly, employers should review their policies with counsel so that they can tailor them to restrict employee conduct that will damage the company and its brand, but not be "reasonably" read to restrict employees' rights to engage in protected concerted activities.

CLEs continued from p. 7

October 29, 2013

MBA Presents

Banking and Lender Liability Trends: Assessing, Defending, and Avoiding Claims

The theories of liability faced by financial institutions today are limited only by the creativity of counsel. In historic volume, borrowers and guarantors are filing preventative suits and counterclaims in efforts to delay foreclosure and create leverage for deficiency negotiations. Consumer protection laws such as the Truth-in-Lending Act and the Real Estate Settlement Procedures Act are evolving. High incentives to assert lender liability claims mean the issues faced today will remain for years to come. What are the best defense strategies for banks faced with today's lender liability claims? Is there any escape? This presentation will discuss key strategies

targeting today's newest lender liability trends. Presenters: Maria L. Kreiter and Maggie Cook, Godfrey & Kahn
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

October 30, 2013

Family Law Section

Separating Yourself from the Crowd: Useful Unpublished but Citable Opinions

For the last several years, certain court of appeals opinions have been unpublished, but citable. Knowing these opinions can help separate you from other attorneys without such knowledge. Presenter: Gregg Herman, Loeb & Herman
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 CLE credit

November 6, 2013

MBA Presents

Where Have My Clients Gone?

The client retention challenge
Presenter: Charles Ehrlich, AmLaw
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
1.0 pre-approved CLE credit

November 15, 2013

Employee Benefits Section

Leaves of Absence and Employee Benefit Plans

Discussion of the compliance challenges that leaves of absence present to employee benefit plans, with a particular focus on health plan and 401(k) plan compliance issues presented by FMLA, USERRA, and state and federal disability leave.

continued page 17

Guest Editorial

Supreme Court's Same-Sex Marriage Ruling Preempts Legislative Process

Attorney Christine M. Flowers

The only certainty in life is uncertainty. Anyone who believes that the fundamental structures and values that define human society are essentially immutable suffers a rude awakening each time something occurs to challenge those preconceptions. It is also true that one person's moral polestar is another's prejudice.

Thus, this year we celebrate the 50th anniversary of the Rev. Dr. Martin Luther King, Jr.'s address on the National Mall, outlining his dream for the nation. The certainty of slavery, subjugation, and discrimination based on skin color has, albeit imperfectly, been dismantled.

We also commemorate, with perhaps less fanfare but equal appreciation, the Supreme Court's decision in *Abington v. Schempp*, which abolished sectarian prayer in public schools. Most observers believe that this was as much a milestone for freedom as the legendary March on Washington, delineating, once and for all, the parameters of religious liberty.

There are, as there always will be, critics of those things. But in the main, there is no question that the First and Fourteenth Amendments were well served by these iconic moments of civil change, as was a society used to somewhat more glacial movement.

But not everything that is described as a blow for civil rights is as easily or universally accepted, particularly when it seems unduly fast-tracked. We've seen that happen this year, with the LGBT community's singular success in securing a federal "right" to same-sex marriage in *United States v. Windsor*. I place the word *right* in quotation marks because, much like the high court's decisions on abortion, there are many more questions than certainties as to the inherent validity of that definition.

In June, the Supreme Court ruled that the federal Defense of Marriage Act, which limited the definition of marriage to one man and one woman (at one time), is unconstitutional. The majority decision was written by Justice Anthony Kennedy, a man who is never at a loss for florid, Harlequinesque pronouncements. He did not disappoint this time, either. In ruling that DOMA is unconstitutional, Kennedy resorted to a variety of different grounds, acting in many ways like a quarterback orchestrating a flea-flicker pass when he veered between Fifth Amendment Due Process, Fourteenth Amendment Equal Protection and, finally, Federalism.

Head spinning. Chief Justice John Roberts weighed in with a dissent that attempts to limit Kennedy's far-reaching language by noting that the ruling should be seen only as an affirmation that DOMA infringed upon a state's right to define marriage. But not one of the legal commentators who dissected the opinion or predicted its historic impact were fooled by that reasoning—least of all Justice Antonin Scalia, who suggested that the *Windsor* ruling would be used to advance same-sex marriage in state courtrooms and legislatures across the nation.

One of the biggest problems with the Court's decision in *Windsor* is that it shows a breathtaking level of disrespect for the American people. In many ways, it is similar to the Court's ruling in *Roe*, because it preempts the ability of the people, through their legislators, to change society in incremental steps. Had the majority in *Roe* not attempted

to create a right to abortion out of penumbras and questionable legal acrobatics, it is likely that the nation would have settled on an acceptable balance of tensions between pro-life and pro-choice factions (which, by the way, were relatively dormant in 1973 and which only gained potency in the aftermath of the ruling). It would have done so through the legislative process, since there were indications 40 years ago that a majority of states were moving away from criminalization.

That is what should have happened in the same-sex marriage context, particularly since there is no real consensus that preventing people from marrying someone of the same gender is significantly different from honoring other society prohibitions such as bigamy or incest. Particularly when it comes to those unions it will recognize as not violating public policy, society is generally the best arbiter of how quickly to advance in the field of what advocates call a "civil right."

Of course, the response to this is what happened 50 years ago in D.C. It is absolutely true that blacks should not have had to simply wait for this country to shed its discriminatory mindset, just as it is equally true that women should have been given the vote decades before they finally achieved the goal.

But defining the right to marry is quite different than telling someone

continued page 17

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MJC 5K Run Gets Boost from Perfect Weather

Justin A. Metzger

Seventy degrees; sunny skies; a light, pleasant breeze off Lake Michigan; and 191 participants all combined at Milwaukee's Veteran's Park on the evening of June 19 to support the Milwaukee Justice Center.

The Third Annual Milwaukee Justice Center MJC 5K Run for Justice saw 169 racers (a record turnout), supported by 22 race volunteers, raise \$8,500, nearly double what was raised in 2012. The five-kilometer course started off on the Oak Leaf Trail along the lakeshore, and followed the park's winding pathways around the lagoon and back.

Carl Holborn (O'Neil, Cannon, Hollman, DeJong & Laing) finished at 17:29, a new record time, beating 2012's best mark by 13 seconds and making him the overall champion. The run also saw its first new women's champion since the event began in 2011, with a 22:14 time posted by Melissa Blair (also of O'Neil Cannon). Kadie Jelenchick (Foley & Lardner LLP) had been the women's champion in both 2011 and 2012. The Bero Group received the MJC 5K Team Spirit Award.

The Mission River Band stuck around to provide live music throughout the event, and Big Bay Brewing Company pitched in with refreshments for everyone.

Additional help was provided by a record number of sponsors, including: Foley & Lardner; InStep Physical Therapy and Running Center; Michael Best & Friedrich; the Milwaukee Bar Association; Milwaukee County Parks; O'Neil, Cannon, Hollman, DeJong & Laing; Quantum LS; Quarles & Brady; SP Video; and The Bero Group (all Gold Sponsors). Sponsors also included Drinker Biddle & Reath; E. Miller & Associates; Kerkman & Dunn; Meissner Tierney Fisher & Nichols; Reinhart Boerner Van Deuren; Rosenberg Consulting Services; Uptown Ford Lincoln; and von Briesen & Roeper (all Silver Sponsors).

Planning is already underway for the Fourth Annual Milwaukee Justice Center MJC 5K Run for Justice. Circle your calendar for Wednesday, June 18, 2014. We'll see you there!



▲ Rounding the first turn at Veterans' Park



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More run photos!



On the home stretch, ▲ making great time



◀ Walkers (and boarders!) arrive at the finish line.

▶ The Mission River Band entertains the crowd (Bud Bobber, left; Dick Phalen, right).



▲ From left to right, back row: Nate Hyle, Brody Klett, Branden DuPont, Fabio Woytal, Mary Ferwerda; from left to right, front row: Heather Mulholland, Raluca Gudry, Janelle Schmidt, Meghan Goerke, Erjola Borici, Sofia Ascorbe

Reducing the Impact of Recusal on the Functionality of the Supreme Court

Attorneys Jeremy P. Levinson and Richard J. Cayo, *Halling & Cayo*



Jeremy P. Levinson



Richard J. Cayo

Judicial recusal issues have plagued the Wisconsin Supreme Court in recent years. These include the substantive standard for recusal,¹ the process by which it should be applied,² and whether contributions to justices' campaign committees require recusal. Adding to the controversy is the fact that Wisconsin is in a small minority of states that lacks a mechanism for preventing recusal or disqualification from rendering the court powerless by denying it a quorum or leaving it evenly divided on a case.

This latter issue is one with concrete and, at times, serious consequences. It has affected the analysis and development of important questions of law. For example, in *State v. Jensen*, 2005 WI 31, 279 Wis. 2d 220, 694 N.W.2d 56, and *State v. Chvala*, 2005 WI 30, 279 Wis. 2d 216, 693 N.W.2d 747, the court was to review issues arising from unprecedented criminal prosecutions of elected officials for having "campaign activity" conducted by state employees. Three justices opted not to participate in the cases, leaving four to decide them. In short *per curiam* decisions, the court, so constituted, answered a number of the questions presented but then revealed that the four participating justices were evenly split on a key issue—namely, whether application of the relevant felony statute was consistent with constitutional precepts of due process. The court of appeals had ruled that the defendants had been accorded due process and the prosecutions could proceed. Two justices would have reversed and two would have affirmed. As happens whenever the court is evenly split in reviewing a lower court's decision, affirmance was automatic. The court of appeals effectively became the court of last resort and its ruling remains the law of Wisconsin. In a wide variety of cases, the supreme court has found itself similarly incapable of resolving important points of law.³

In certain types of proceedings such as original actions and attorney and judicial disciplinary matters, the supreme court does not review a lower court's ruling but decides a case directly. In such cases, deadlock does not lead to the automatic affirmance of a lower tribunal's ruling but, rather, leaves the case undecided, precluding any decision, discipline, or vindication.

In disciplinary proceedings against Justice Gableman, a six-member court was deadlocked 3-3 not only on the substantive outcome but also on the effect of that deadlock.⁴ When the Judicial Commission filed a disciplinary complaint against Justice Prosser, recusals left only three justices to hear the matter, one less than the minimum necessary for "a quorum for the conduct of the court's business." Wis. Const. Art. V, § 4(1). By all appearances, the charges against Justice Prosser will remain unresolved in perpetuity.

When the supreme court lacks the capacity to rule as a result of recusal or disqualification, the judicial system cannot function as designed. Litigants, the public, and the development of the law are denied the full value of our appellate system. The court of appeals, divided into four geographic districts, is intended largely as an "error correcting court." From there cases flow to the supreme court, the functions of which include developing and defining the law.⁵ Paralysis of the supreme court by recusal or disqualification stymies development and clarification of

the law and disservices the parties to particular controversies.

The common law offers the "rule of necessity" as one solution to this problem. One articulation of this rule is:

[A]lthough a judge had better not, if it can be avoided, take part in the decision of a case in which he has any personal interest, yet he not only may but must do so if the case cannot be heard otherwise.

The rule of necessity is said to have particularly strong applicability where disqualification may impact the ability of all justices to participate in a case. Put bluntly, "where all are disqualified, none are disqualified."⁷

The rationale for the rule of necessity is intuitive. The courts must function and it is arguably better that they function despite acknowledgment of what would otherwise warrant disqualification than not function at all. It may be that a justice's recognition and acknowledgement of an otherwise disqualifying circumstance provides some protection for the integrity of the court and public perception of its decision-making.

It is equally apparent that application of the rule of necessity can be unsatisfying and uncomfortable. As the pithy articulations of the rule lay bare, it involves a judge doing what a judge ought not. Faced with competing interests, between which there is no meaningful compromise, the rule of necessity picks one over the other. Another approach may offer less of an all-or-nothing proposition.

Forty-six states have statutory or constitutional provisions establishing mechanisms for designation of a substitute for a justice or justices incapacitated from participation in a particular case. In large part, they permit the Chief Justice, "the court," or the governor to appoint a stand-in from a pool that can include retired justices of the court, active or retired judges from the lower courts, and non-judge members of the bar. Wisconsin, along with Indiana, Michigan, and Virginia, has no such legal provision.

Article VII, § 4(3) of the Wisconsin Constitution states:

The chief justice of the supreme court shall be the administrative head of the judicial system and shall exercise this administrative authority pursuant to procedures adopted by the supreme court. The chief justice may assign any judge of a court of record to aid in the proper disposition of judicial business in any court of record *except the supreme court.* (Italics added.)

Barring nuanced separation of powers problems, this provision appears not to preclude a mechanism for the designation of a stand-in for a justice disabled from participation in a case when necessary to maintain a quorum or avoid an even-numbered panel of justices. Such a mechanism could even avoid the controversy inherent in a discretionary power of appointment by being self-executing. For example, it could provide for the designation on a random (or objective) basis from a designated pool—e.g., active judges, or judges of the court of appeals.

If Wisconsin were to join the vast majority of other states in this respect, recusal and disqualification would no longer threaten the supreme court with incapacity that in some cases might be perceived as outcome-

In Memory of Ross Kodner, a Legal Technology Pioneer

Attorney Nerino J. Petro, Jr., State Bar of Wisconsin



Ross Kodner

Ross Kodner, Wisconsin lawyer and legal technology evangelist, passed away on July 29, 2013, just 2 days after his 52nd birthday. Ross almost single-handedly put legal technology on the map for lawyers, not only in Wisconsin but throughout the United States and many other parts of the world. Ross was one of the finest presenters I knew and could entertain and educate an audience like few others.

I first met Ross more than a decade ago, and over the years, he was a colleague, mentor, and most importantly, my friend. Ross was relentless at promoting the benefits of legal technology for lawyers and their staff, and had a personality as grand his ideas. It seemed that Ross never stood still, and each time I spoke or exchanged e-mails with him, he was in a new city or state.

Ross was a huge proponent of reducing the amount of paper that lawyers handled, and so created his Paper LESS™ office concept. Ross was a pioneer in this and other practice management tools, and their benefits for

lawyers. But Ross will probably be best remembered for one of his “60” tips, tricks, gadgets, or website presentations.

If you were lucky enough to attend one of these sessions, you could count on several things: (1) there were always more tips than 60, (2) there was never enough time to get through all of them, and (3) you could always count on seeing at least one thing that made you laugh. As in all of his presentations, Ross could convey more information in a single PowerPoint slide than anyone else. Anyone who attended one of his presentations understands the irony of Ross telling an audience to “keep your PowerPoint slides simple,” as he moved through slides that were packed with images and text from corner to corner.

Ross loved what he did and did not hesitate to help lawyers in need, especially after some of our country’s worst disasters. Ross was instrumental in assisting the New York State Bar Association’s creation of its Legal TechAid website after September 11, 2001; and then, a short time later, helping lawyers impacted by Hurricane Katrina. But disasters were not the only occasions on which Ross reached out to the legal technology community: for years Ross and Joanna Forshee hosted the Annual Consultants & Technologists Dinner during

the ABA Techshow. Ross’ good friend Dale Tinchler of Consultweb.com has posted images from a number of these dinners on his website at <http://bit.ly/15AiXiS>. Ross was in his element at these dinners and was a gracious host. While the dinners were a great time, Ross also used them as an opportunity to help raise money for charities. These events were just more proof that even in his social life, Ross liked to multitask.

I spoke to Ross just before he passed away, and he was his usual ebullient self. Like others with whom I have spoken, I am still trying to accept a world without Ross in it. After his passing and the outpouring of sympathy and kind words about personal experiences, we truly begin to realize how many lives Ross touched and influenced. Others have written beautiful remembrances of him, including his friends Craig Ball, Robert Ambrogi, and Jim Calloway. I urge you to read them at <http://bit.ly/16TEKzc>, <http://bit.ly/16TEYWR>, and <http://bit.ly/16TF0yb>

Ross was a husband, father, business partner, and visionary. He leaves behind him a legacy that will endure far into the future. The legal community will miss his knowledge, wit, and contributions. For myself, I miss my friend.

MJC Expands Service with New Foley Inns of Court Partnership

Justin A. Metzger, Milwaukee Justice Center

Family law has long been a key area of service the Milwaukee Justice Center has provided to the community. Now, thanks to a new partnership between the MJC, the Marquette Volunteer Legal Clinic (MVLC), and the Leander J. Foley, Jr. Matrimonial American Inns of Court, the MJC will provide legal advice in family law matters, in addition to its usual assistance with family law forms, on a daily basis.

Until now, legal advice services have been provided only on Thursday and Friday afternoons from 2:00 to 4:00 p.m. With the support of the Foley Inns and the MVLC, time slots for those services have been added on Monday through Wednesday from 1:30 to 3:30 p.m.

“We have gotten very positive feedback from our members,” Foley Inns president Attorney Rebecca Millenbach (Nelson & Davis) said. “I cannot emphasize enough how wonderful it is to have the instant gratification of helping someone with a legal issue.”

Not only will the added services benefit Milwaukee County residents and litigants, but it is also aimed at helping the Milwaukee County court system. “We are anticipating that fewer motions and *de novo* reviews will be filed because clients will be advised on the law,” MJC Executive Director Dawn Caldart said. “We want to help clients make assessments on the merits of motions.”

Another benefit is to Marquette University Law School student volunteers. “It is an opportunity for those law student volunteers interested in family law to delve more deeply into the area and develop professional connections,” MJC Attorney Supervisor Mary Ferwerda remarked.

Currently, clients are only seen in the family law clinic by referral. At the beginning of the new program, MJC volunteers, after a round of issue-spotting, are making those referrals. The goal, however, is to encourage family court commissioners, judges, the Sojourner Family Peace Center, and off-site MVLC clinics to refer clients to the new family legal advice service.

CLEs continued from p. 10

Presenter: Kirk A. Pelikan, Michael Best & Friedrich
Noon – 12:30 (Lunch/Registration)
12:30 – 1:30 (Presentation)
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November 20, 2013

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Comedic Legal Education

America’s Funniest Lawyer Presents ... Legal Ethics Is No Laughing Matter ... Or Is It? It’s Not the Fruit, It’s the Root: Getting to the Root of Our Ethical Troubles

In this unique legal ethics seminar, acclaimed legal humorist Sean Carter goes beyond the do’s and don’ts of the Rules of Professional Conduct to get to the heart of the matter — the common mindsets that result in ethical violations in the first place. Employing the witty one-liners and poignant stories that have made him a favorite presenter at bar events across the country, Mr. Carter demonstrates the root causes of our ethical ills. Furthermore, he provides tips and insights on how to heal ourselves from these mindsets so that the ethical canons become guideposts and not obstacles in our drive to become successful lawyers.

Nice Lawyers Finish First

It’s been said that nice guys finish last. And while that might be true in the rough-and-tumble arenas of politics, professional prize fighting, and marriage, nothing could be further from the truth in the practice of law. Zealous representation doesn’t require us to be zealots. In fact, the most effective representation requires just the opposite. Nice lawyers finish first ... and so do their clients!

Presenter: Sean Carter, Humorist at Law, Mesa, Arizona
Noon - 12:30 (Lunch/Registration)
12:30 - 3:45 (Presentation)
3.0 CLE ethics credits

DOMA continued from p. 11

that they are inferior because of the color of their skin, or that they have no voice because of their gender. Sexual orientation has not yet reached that level of consideration as a suspect class, such that any distinctions that do not satisfy the very high standards imposed by equal protection analysis are invalid.

More importantly, we should not be blackmailed into complying with the demands of a very vocal minority out of some misguided sense of sympathy. Until a majority of society believes that traditional, heterosexual marriage is of absolutely no unique value to future generations (which will not exist if the potential for reproduction is

Sponsorships and Donations Urgently Needed for 2014 National High School Mock Trial Tournament in Madison

Every fall, thousands of teenagers across the country get ready to go to court, not because they have to, but because they want to. From September to April, these young people immerse themselves in the inner workings of the U.S. system of justice. After school, in the evenings, on weekends, learning rules of evidence and procedure, they confront the complexity—in concrete cases—of some of our most challenging current issues.

All across the country, before real judges, the high school students try the cases they have been preparing. From opening statements through direct and cross-examination of witnesses to closing arguments, they present each part of a legal case. Each school’s team has its own “attorneys” and “witnesses,” and must be ready to present either side of the case before “juries” that score their performances. Trial by trial, the teams compete for the championship of their jurisdiction, vying for the opportunity to take on all the other winners at the national championship each May. In May 2014, they will be coming to Madison for a chance to claim the National Championship, hosted by the State Bar of Wisconsin.

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Past national competitions have offered many opportunities for sponsorship exposure:

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For more information, visit wisbar.org/nationalmocktrial2014.

considered optional), it is wrong for a narrow majority of justices to rewrite the social contract.

When they do that, they give sanction to others, like Pennsylvania Attorney General Kathleen Kane, to ignore state laws that prohibit same sex marriage, or a local Pennsylvania Registrar of Wills who began handing out marriage licenses to same-sex couples mere weeks after *Windsor* was decided.

We are a nation of laws, not emotion. Last time I checked, that was still a certainty.

Attorney Christine M. Flowers is a columnist for the Philadelphia Daily News.

Save the Date

10th Annual State of the Court Luncheon

Partners in the Administration of Justice

Thurs., October 17, 2013

Noon - 1:30 p.m.
Wisconsin Club
Grand Ballroom
900 W. Wisconsin Ave.



- Agenda:**
- 11:30 Registration
 - Noon Welcome and Opening Remarks
Beth Ermatinger Hanan, MBA President
 - 12:05 Lunch
 - 12:30 State of the Court Address
Hon. Jeffrey A. Kremers, Chief Judge
 - 1:00 Pro Bono Publico Awards
Beth Ermatinger Hanan

Visit www.milwbar.org for more details and to register.

The Messenger is pleased to publish, complete with the author's annotations, the winning entry from the 1st Annual Terence T. Evans Humor and Creativity in the Law Competition sponsored this year by the Eastern District of Wisconsin Bar Association. Michael Solberg penned his winning poem as a third-year student at the University of Wisconsin Law School.

The Rime of the Ardent Gunner¹

Michael Solberg

Part I: The Gunner's Plight

The Ardent Gunner² raised his hand.
His question was arcane,
And though the class was sick of him,
He'd ask it just the same.

Professor looked him in the eye
and said, "You bother me.
Now drop your hand. We must move on!"
Eftsoons his hand dropt he.³

For to that point the gunner posed
Pedantic questions four,
And not a soul inside the room
Could tolerate one more.

But after class he seats himself
And verbally assails
The student who should dare pass by,
And tells his peer his tale.

"I was a normal undergrad,"
The Gunner states with pain,
"But lo! I studied liberal arts
Then hopped the law school train."

The student harbored sympathy,
But had to leave for class.
The gunner held him captive though;
The student could not pass.

"I fear thee, Ardent Gunner,"
The poor student stated plain.
"The highlights in your contracts text
Suggest that you're insane!"⁴

The gunner simply carried on;
The student could not leave.
Until the tale was told in full,⁵
There would be no reprieve.

"My bags were packed; my books were bought,
And I was filled with glee.
My destination thrilled me so:
The university!"

"An English major I declared,
And all went well at first
Until the market's well ran dry,
Until I felt the thirst."⁶

"I had good grades, and I was smart,
but who would hire me?
Though my diploma read B.A.
B.S. was my degree."⁷

"Ardent Gunner, your eyes suggest
Your sanity is lost.

Now are you cursed?"—"Just risk averse;
I gave up Robert Frost."⁸

"I bought an LSAT study guide;
The studying was tough.
Through all my fear, I persevered.
My score was good enough."

"But that was just the iceberg's tip;
I had to be the best;
A gunner I'll forever be,
For it is Fate's behest."

Part II: The Student's Response

The student interjected then;
He felt he had to say,
The gunner's tale was but a wail
Of a tired, old cliché.

"I'm sorry that you feel that way;
I'm moved by your sad song.
You fail to see the joys of law,
You're prima facie wrong."⁹

"There is no doubt that Robert Frost
Is talented indeed,
But poems don't hold a candle to
Hawkins v. McGee."¹⁰
"For when you get right down to it,
Most poetry is bland.
I'd rather read a contracts case,
About a hairy hand."

"And if you must have English Lit,
Just channel Frankenstein
When reading Constitution text,
And claim that it's alive!"¹¹

"Law school class is thrilling, too,
And ready you must be;
The students will play Euthyphro,
Professor, Socrates."¹²

"Adrenaline will spike your pulse;
You'll learn to deal with fright.
You'll hit your stride, be satisfied
When your answer's somewhat right."

"You'll use complex analysis,
And as you think things through,
You'll find new ambiguities
In things you thought you knew."¹³

"So can't you see law's benefits?
Do not be so headstrong.
They call us sharks; we're more like larks.
They just can't grasp our song."¹⁴

Part III: The Resolution

The gunner's eyes, ensconced in mist,
Grew wide and resolute.
He saw the student had a point;
And that it was not moot.¹⁵

"I thank you for your kindly¹⁶ words.
I see that you are right.
I won't despair but will repair
This self-inflicted plight."

"I'm glad I came to study law.
I'll cast off all my woe.
I feel reborn; tomorrow morn
De novo I will go."¹⁷

¹Portions of this poem are loosely based off of *The Rime of the Ancient Mariner* by Samuel Taylor Coleridge.

²A "gunner" is a somewhat derogatory term for a law student who tends to ask esoteric questions with distracting frequency. While some might scoff at the gunner as a socially inept egghead, this poem suggests that the gunner's behavior stems from an underlying uncertainty or perhaps an insecurity, and it is better to comfort the gunner than to ridicule him. After all, most law students have a little gunner in them.

³This line comes directly from *The Rime of the Ancient Mariner*. Samuel Taylor Coleridge, *The Rime of the Ancient Mariner*, in WORDSWORTH & COLERIDGE: LYRICAL BALLADS & OTHER POEMS 208 (Wordsworth Editions Ltd. 2003). I include this footnote because I am a quasi-neurotic law student with an intense aversion to plagiarism. While the line is linguistically identical to line 12 in Coleridge's poem, the context and effect of the line in this poem are much different.

⁴Highlighting is a popular law school activity in which a student uses special, bright-colored markers to underscore those portions of the text that she deems important. However, over-highlighting is a common problem. Symptoms include an inability to resist highlighting entire pages, frequently running out of highlighters, and yellow-stained fingers.

⁵This sentence caused me to become physically ill because I had to use the passive voice to retain the rhyme scheme. A devoted scholar of legal writing, I cringe at the very notion that the passive voice is sometimes necessary, and I sincerely apologize to the readers for the pain that the passive voice in this poem will surely cause.

⁶The perception that English degrees are not useful in today's technology-driven economy is at least partially the cause of the Gunner's plight. However, many technology startups are looking for English and other humanities majors to help advertise and market new products. See Michael S. Malone, How to Avoid a Bonfire of the Humanities, WALL STREET JOURNAL, Oct. 25, 2012, at A17. In light of these new options for humanities majors, when an interviewer asks, "So, why did you decide to go to law school?"—the answer, "Well, I was an English major"—should no longer be sufficient.

⁷"B.S." is both the abbreviation for "Bachelor of Science" and the shorthand for the excrement of non-castrated male cattle. This line of the poem plays off of the double meaning to highlight the misconception that a Bachelor of Arts is useless. See *supra* note 6.

⁸This exchange between the student and the Ardent Gunner mirrors the line in Coleridge's *The Rime of the Ancient Mariner* where the Mariner tells his listener that he senselessly shot an albatross, which caused him to become cursed and endure a perilous journey. Here, the Ardent Gunner's great immoral action is giving up Robert Frost, which leads him on a perilous journey to law school. The comparison of the slaying

continued page 21

The Milwaukee Bar's Gettysburg Hero¹

Attorney Hannah C. Dugan

During his life, Milwaukee attorney Frederick Winkler seemed to be everywhere. He was the Zelig of civic life in Milwaukee, the Forrest Gump of the American Civil War. And yet he is essentially unknown today. All the more reason and all the more relevant to recall him during the 150th anniversary of one of his most remarkable achievements: commanding Wisconsin's famous 26th Regiment at Gettysburg.

The Backstory About Winkler's "Field Journal"

Winkler's life is rather well documented because he remained a celebrated "local boy" after the Civil War, an active legal practitioner and an important public servant until his death at age 83 in March 1921. Therefore, a good many newspaper articles, official minutes, legislation, and court records are sources of information about him. However, the primary source of information and insight into Winkler's achievements is a series of battlefield letters. His time during the Civil War was well documented by none other than himself, though the documentation is available to us only via an edited version. The letters he wrote to his fiancé-turned-wife during his entire war experience from 1862 to 1865 were saved in secret.

In 1963, one of Winkler's nine children, Louise Winkler Hitz, published the letters from her father to her mother in the book *Letters of Frederick C. Winkler: 1862-1865*. Louise noted in the book's foreword that during the summer of 1897 (32 years after the war), all members of the household were gone except her mother, the former "Fannie Wightman of West Bend." Fannie hired a typist. Together they typed the letters, mining "all sentiment" expressed by Winkler from what essentially were love letters, and leaving a complete diary from week to week of his experiences as a combat officer.

Even with the deletion of "all sentiment," the letters reveal the remarkably high level of communication that occurred during the Civil War. Winkler frequently referred to and opined on the issues of the day, the various Milwaukee news that Fannie and others sent to him, and the reports and editorials of the East Coast newspapers that he seemed to read in the field almost contemporaneously with their publication. The book includes Winkler's letter to his future father-in-law dated September 30, 1862, which was his letter of engagement and request for permission to marry. He left for the war on October 6, 1862; he returned to Milwaukee several times during the war, including in 1864 for his marriage to Fannie.

But we're ahead of the story.

Brief Pre-War Biography: Armed by the Milwaukee Bar

Winkler was born in Bremen, Germany in 1838.² In 1842, his father Carl moved to Milwaukee and served as a pioneer druggist on what is now Wisconsin Avenue. Carl's family joined him in 1844. Winkler attended Milwaukee schools and studied the law with H.L. Palmer, Esq. Winkler completed his law studies in Madison with Abbott, Pinney & Gregory. He was admitted to the bar at Madison in 1859.

He returned to Milwaukee and practiced law until 1862, when he mustered in Milwaukee with the famous 26th Regiment of the Wisconsin Infantry—a German regiment.³ Winkler became the captain of the regiment's Company B. On October 6, the regiment left the state via rail, headed for the Rappahannock River Valley in northern Virginia, where it spent the winter in drill, guard, and picket duties.

The first of Winkler's letters includes the railroad scene upon the regiment's leave-taking:

All along the road down to the depot people crowded upon us, rushed upon us, pulling the boys out of the ranks, shaking hands and kissing them and bidding them a final farewell. The scene at the depot was one of the most affecting I have ever witnessed. A tearful crowd waved a last farewell and tearfully our soldiers answered it. The most happy and light hearted wept there, but it was only for the moment of parting, once gone all were in good spirits and a more cheerful, happy and sprightly party has never been known than the 26th Wisconsin on the way to Washington I had a revolver presented to me by some friends of the Milwaukee Bar just before leaving.

The Forrest Gump of the Civil War

During the 33 months that Winkler was deployed, he fought in many of the most significant campaigns and battles of the 49-month conflict. At different times and for different reasons, the 26th was "attached" to the 2nd Brigade, the 3rd Division, the 11th Army Corps, the Army of the Potomac, the Army of the Cumberland, the 3rd Brigade, and the 20th Army Corps. The regiment participated in such significant and tremendously brutal events as the Battle of Fredericksburg (1862); the "Mud March," Chancellorsville Campaign, Battle at Chancellorsville, Gettysburg Campaign, Battle of Gettysburg, Battle of Wauhatchie,

Chattanooga-Ringgold Campaign, and Mission Ridge (1863); the Atlanta Campaign, Siege of Atlanta, Occupation of Atlanta, March to the Sea, and Siege of Savannah (1864); the Campaign of the Carolinas, Battle of Bentonville, Advance on Raleigh, and Occupation of Raleigh (1865); and the March to Washington, D.C. (June 17, 1865). Winkler began his tour as a captain in 1862, was named major in 1863, and became a lieutenant colonel in 1863 when the predecessor of his command was discharged by reason of his wounds. In August 1864, Winkler was promoted to colonel, and in July 1865 was brevetted by the War Department as a brigadier-general, after the regiment mustered out. The regiment's original strength was 1,002, to which recruits were added in 1864 to total 1,089. Of these, 284 died, 31 deserted, 125 transferred, 232 were discharged, and 449 mustered out.

Captain Winkler's first major duty was serving as judge advocate over many courts-martial. He would be commissioned at various times back and forth between judge advocate work and field service. In five or six cases he had to certify death sentences to headquarters, but all but two of his death sentences were commuted.

Apart from ordinary judge advocate work, Winkler had a famous and remarkable case during the war in which he was appointed defense counsel at the request of his client, Major General Carl Schurz.⁴ In the Court of Inquiry was an investigation of Schurz and a part of his command for allegedly having not followed orders, according to an official report by General Hooker about the night battle at Wauhatchie in Lookout Valley, Chattanooga. With Winkler as counsel, the investigation was concluded and the significant charges dismissed.⁵

Gettysburg Hero

The letters in the days before the Battle of Gettysburg have a disarming tone of casualness and calmness to the modern reader. They reflect a regiment officer who is unaware and without premonition of the tremendous bloodbath that awaited him in the three-day battle that began July 1, 1863.

On June 30, the regiment changed camp to a "sisterhood"—a convent on a wealthy campus belonging to the Sisters of Charity, which included a boarding school ("it is vacation and at present most of the scholars away") and a large frame house that the Sisters offered to the regiment as "headquarters." The on-grounds priest "tells me that it was once used for an Orphan Asylum, and is ... kept as a

Gettysburg continued from p. 19

refuge for the homeless.”⁶ The day began with countermanding both reveille and orders to march, such that “we were allowed to sleep a couple of hours longer.” The day ended after “the Sisters gave us a very good dinner which we all enjoyed heartily.” The next letter, dated July 4, is uncharacteristically short and far less chatty than earlier entries. It states simply: “In three days’ hard fighting we have whipped the rebels terribly; they’ve fled. We now start pursuit. I am saved from all harm, and that is all I can tell you now.”

Winkler returned to the convent and on July 6 began writing long missives to his wife, stating that “I intended, at first, to give you a full account of the battle of Gettysburg as I saw it, but I have not paper enough to do it upon. I hate now to return to the dreadful scenes of strife.” His tone is notably changed; his detailed account is one of trauma and bewilderment. He recorded that the 26th Wisconsin Volunteer Infantry Regiment arrived on the Gettysburg battlefield with an effective strength of 516 in the early afternoon of July 1. The brigade was heavily attacked from the front, and was holding its own when a division to its east collapsed. Many horses, including Winkler’s own, were seriously wounded; Major General Schurz nearly suffered a shell casualty. By July 3, the brigade was forced back to Gettysburg, but not before fielding serious losses, including 46 killed, 134 wounded, and 37 missing. Notably, four line officers were killed. Winkler held the fourth highest rank in the regiment when, during the heat of battle, injuries to higher-ranking officers thrust him into the role of acting field officer. At the end of the battle, Winkler, seemingly stunned, reported that “the 26th has only about 230 men fit for duty just now. A number, I believe, had been taken prisoner.”⁷

Back in Wisconsin: the Zelig of Post-War Milwaukee Civic Life

Law practice and business. General Winkler’s return to Milwaukee meant return to private practice. But he never was outside of civic life or out of the limelight.⁸ As a practitioner, he was associated at various times with the prominent attorneys of his time. At one time, when his firm was known as Winkler, Flanders, Smith, Bottum and Vilas, it was nicknamed the “Honest Five.”⁹ Winkler retired in 1913 from active practice. In 1889, he was named a trustee of Northwestern Mutual Life Insurance Company and served 32 years in that capacity, including service as a member of its Finance Committee from 1898 to 1918, and its Executive Committees from 1899 until his death in 1921.

Political activities. Winkler’s political activities began shortly after the war, when he served as an 1869 member of the Republican state central committee, an 1880 delegate to the Republican National Convention that nominated Garfield, and an 1894 delegate who nominated Blaine. He was always a Republican but did oppose World War I, and therefore publicly supported Wilson’s re-election. He presided at the Milwaukee Auditorium meeting when Woodrow Wilson came to town in 1916, stirring the audience to anti-war sentiment. This child of Germany, who identified strongly with that nation, courageously insisted that its rulers cease their violations of rights. Winkler continued to take that public stance, including a 1918 speech recorded at the Milwaukee Bar, where he said:

As Abraham Lincoln’s era brought about the death of slavery, so will the present crisis, as we hope and believe, bring the death blow to international rapacity and list of conquest. We are confronted with a new crisis. It does not involve the enslavement of man but domination of force of arms of nation over nation, founded on the claim that might makes right.¹⁰

In 1872, Winkler served as a member of the state assembly and also a candidate for Congress. He lost both that congressional bid and another in 1892.

Bar and Reform Work. Winkler served as president of the State Bar of Wisconsin and as a vice president of the American Bar Association, and was instrumental in procuring and hosting the ABA’s 1912 conference in Milwaukee.¹¹ Winkler’s retirement in 1913 from active practice occurred at about the same time as the ascendance of Emil Seidel and Daniel Hogan—socialist mayors with whom Winkler was simpatico. As a member of the Milwaukee City Club and the Milwaukee Bar Association, Winkler was involved in the 1916 creation of the Legal Aid Society.

Winkler’s reform efforts were both in leadership roles and in drafting of legislation. He was a member and president of the Wisconsin Civil Service Reform League, and later an officer in the National Civil Services Reform League, of which his former client and commanding officer, Carl Schurz, served as founder and director.

In 1885, Winkler drafted state legislation to create the City of Milwaukee Fire and Police Commission—the first commission of its kind in the nation. It was designed to curb the corruption and political influences that had developed since 1855 (in the police force) and 1875 (in the fire department). In 1909, Winkler was a member of the Milwaukee charter

convention, and drafted the home rule bill and the nonpartisan election law for the city.

Civic Leadership. Winkler was an active member and officer of the Phantom, Milwaukee, and Old Settlers’ Clubs, the Grand Army of the Republic, the Military Order of the Loyal Legion; and a member of the 26th Regiment organization. In 1891, Winkler, George Koeppen, and Henry Gugler brought together about 60 other men at the Plankinton House Hotel and organized the Deutscher Club to promote and provide a venue for German-American discussions and understanding during yet another period of immigration. Winkler drafted the bylaws and was elected first vice president. They met at the Old Opera House (near the current Pabst Theater) until an 1894 fire damaged the clubrooms.

Faced with the choice of reestablishing or disbanding the Deutscher Club, Winkler led it up Grand Avenue to the vacant Mitchell Mansion (Alexander Mitchell died in 1887) and offered \$100,000 for the property, which eventually evolved into the Wisconsin Club. The club had an opening night party on May 1, 1895 with 450 attendees.¹²

The accounts of Winkler’s funeral report that all of these groups selected delegates to walk in the long procession to Forest Home Cemetery, including both actual pallbearers and a long list of honorary pallbearers.

Post-Script. Winkler’s letters from the battlefields reflect that he was informed about current events, and also reflect his opinions of those current events. For example, on Christmas Day 1862, he commented favorably about President Lincoln’s plans for issuing the Emancipation Proclamation, about which he read in *The Atlantic Monthly*. On November 18, 1863 he wrote Fannie a short letter about the weather and the regiment’s inability to carry out its duties due to fog. On November 20, 1863 he discussed food: biscuits had replaced hardtack, and even though the biscuits were tough and without butter, and the coffee poured without milk, they “constitute an excellent breakfast.” He continued about the “luxury” of having potatoes the previous night, before reporting on the praises his regiment received for a recent battle. There was no letter, however, on November 19, 1863, nor any commentary on events of that day, when Lincoln delivered his game-changing Gettysburg Address.

¹Hitz, Louise Winkler, ed., *Letters of Frederick C. Winkler: 1862 to 1865* (University of Wisconsin, Madison, WI, 1963); Watrous, Lieut. Col. Jerome A., ed., *Memoirs of Milwaukee County*, Vol. II (Western Historical Association, Madison, WI, 1909); “Winkler’s Body on Way to City,” *Milwaukee Journal* (March 23, 1921); “One of State’s Great Men, an American of Americans,” *Milwaukee Journal* (March 23, 1921); “Gen.



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.

Pro Bono Cocktail Reception Set for October 24

The Milwaukee Bar Association's Fifth Annual Pro Bono Cocktail Reception will take place on October 24 from 5:30 to 7:30 at the MBA, 424 East Wells Street. The event is generously sponsored by the MBA, the State Bar of Wisconsin, Marquette University Law School, the Coalition for Access to Legal Resources (CALR), and Quarles & Brady. All members of the legal community in Milwaukee—including attorneys, law students, and judges—are invited to attend.

Milwaukee County Circuit Court Judge Richard Sankovitz will give a brief

presentation about the rewards—to oneself and the community—of making *pro bono* work a part of your professional life, followed by discussions by three local attorneys about their *pro bono* endeavors. Representatives from several legal services organizations that need *pro bono* attorneys will be in attendance, and there will be plenty of time, both before and after the short program, to network with other attorneys. As an added attraction this year, the new Mobile Legal Clinic bus for the Milwaukee Justice Center will be parked outside and available for a look around.

“This is always an enjoyable evening, and it gives newer attorneys an opportunity to talk with more seasoned members of the bench and bar about the many *pro bono* opportunities in our community,” said Laura Gramling Perez, Chair of the MBA's Legal Services to the Indigent Committee. “We urge all MBA members, and particularly newer attorneys, to attend.”

There is no charge to attend the reception. To RSVP, contact Britt Wegner at (414) 276-5931, or bwegner@milwbar.org.

Rime continued from p. 18

of a majestic bird with the forsaking of an American poet exaggerates the Gunner's plight.

⁹Although it may be tempting at times, using Latin phrases in normal conversation is socially unacceptable. Many law students learn this the hard way.

¹⁰*Hawkins v. McGee*, 146 A. 641 (N.H. 1929). This case is one of my favorite cases, and I place it in a category that I affectionately refer to as “natural selection cases.” *Hawkins* involves a father who contracts with a doctor to remove some scar tissue from his son's hand. *Id.* at 641-43. The doctor has the ingenious idea to do a skin graft from the poor boy's chest, a procedure that the doctor completely botches, resulting in the infamous hairy hand. *Id.* All of the parties in this case will likely experience the wrath of natural selection. The doctor is an idiot for grafting chest skin onto a hand; the father is an idiot for allowing the doctor to perform the procedure merely to remove scar tissue; and the son is an idiot for going along with it. Natural selection is nature's idiot removal device, and the *Hawkins* trio never stood a chance.

¹¹Despite the mistaken belief to the contrary, Victor Frankenstein did not say, “It's alive!” when his creature came to life. See MARY WOLLSTONECRAFT SHELLEY, *FRANKENSTEIN OR THE MODERN PROMETHEUS* 42-45 (Cornhill Publishing Co. 1922) (1818). Instead, the line was popularized in Universal Picture's 1931 film: *Frankenstein*. See *Frankenstein* (1931 Film), WIKIPEDIA (Dec. 15, 2012, 10:50 PM), [http://en.wikipedia.org/wiki/Frankenstein_\(1931_film\)](http://en.wikipedia.org/wiki/Frankenstein_(1931_film)). The line in the poem refers to the method of constitutional analysis that relies on the idea that the Constitution is a living document. However, Justice Scalia would probably agree that injecting life into the Constitution has a similar effect to injecting life into a creature consisting of an amalgam of body parts: it may seem like an interesting idea, but there is no telling what atrocities the animated creature will commit. See Lisa K. Parshall, *Embracing the Living Constitution: Justice Anthony*

M. Kennedy's Move Away from A Conservative Methodology of Constitutional Interpretation, 30 N.C. Cent. L. Rev. 25, 33 (2007) (discussing Scalia's rejection of the idea of a living Constitution). As a side note, there will be few instances in my legal career in which I can acceptably cite Wikipedia, and so I cite it here with considerable satisfaction.

¹²See Plato, *Euthyphro*, in CLASSICS IN WESTERN PHILOSOPHY 28-40 (Steven M. Cahn ed., 1977). In Plato's *Euthyphro*, Euthyphro claims to know what makes something pious, but as he tries to explain his theory to Socrates, Socrates relentlessly questions him and pokes holes in Euthyphro's logic. *Id.* The dialogue ends with Euthyphro, both annoyed and embarrassed, telling Socrates that he is in a hurry and must go. *Id.* at 40. Professors, often with visible enjoyment, play the part of Socrates by ruthlessly questioning students about their answers. Like Euthyphro, most students have only a tenuous grasp of what the professor would like to hear and would like nothing more than to claim to be in a hurry to escape the inquisition. Thus, law students share Euthyphro's ignorance but envy his freedom to exit.

¹³The analytical skills learned in law school are useful in other aspects of life, but it is possible to get carried away. Early on in my law school experience, I found it difficult to hear old sayings and proverbs without questioning their phrasing and interpreting them strangely. For example, there is great dispute over which came first: the chicken or the egg. Law school has taught me to think outside the box, and I think we all need to agree that the chicken came in the egg. For another example, I don't like the saying, “The early bird gets the worm.” It may be true, but whose perspective am I to take? If the early bird gets the worm, shouldn't the worm develop a strong tendency to sleep in? Cardinals are the most extensively regulated species of bird; you rarely come across a discipline that does not have a cardinal rule. If you have a lot of skeletons in your closet, one explanation is that you may be taking your protest of rising burial costs too far.

¹⁴Larks are birds that have distinctive and elaborate songs.

Alaine Camfield, *Alaudidae larks*, ANIMAL DIVERSITY WEB, <http://animaldiversity.ummz.umich.edu/accounts/Alaudidae/> (last visited Jan. 6, 2013). No one would fault a lark for being an elitist snob because his song is complicated. Yet the complexity of a lawyer's work is probably partially responsible for the misunderstanding that lawyers are bloodthirsty, opportunistic sharks. Of course, the explanation for this might be that the lark's complex behavior results in a beautiful melody, whereas the lawyer's work results in a bill to a client who would often like to contest not only the number on the bill but also the location of the decimal point.

¹⁵“Moot” is a peculiar word that has taken on two meanings. The archaic definition of moot is, “Open to argument; debatable.” BLACK'S LAW DICTIONARY (9th ed. 2009). However, today “moot” is often used to describe something that has “no practical significance.” *Id.* The two definitions are not necessarily contradictory, but they could easily lead to confusion. For example, it is a moot point that everything in law is moot. Any attempt to discern the meaning of the prior sentence would throw the reader into a rabbit hole that would cause even Lewis Carroll^{15(a)} to lose his sanity. In the poem, the Gunner uses the more modern definition of moot.

^{15(a)}Lewis Carroll is the pseudonym for Charles Dodgson, the author of *Alice's Adventures in Wonderland*. In *Alice's Adventures in Wonderland*, Alice follows a talking rabbit down the rabbit hole and has a whimsically nonsensical adventure. At the risk of recreating the rabbit hole with another improperly formatted, indented footnote, you'll just have to trust me on this.

¹⁶As far as I know, “kind” and “kindly” are both adjectives that mean the same thing. While the variation of the word appears to have little practical use, it is a gem for poets looking for an extra syllable.

¹⁷See *supra* note 9.

Gettysburg continued from p. 20

Winkler Dead,” *Milwaukee Sentinel* (March 24, 1921); “Gen. Winkler, American,” *Milwaukee Journal* (March 25, 1921); *Court of Inquiry: on Maj. Gen. Hooker's Report of the Night of Engagement of Wauhatchie*, Argument of Maj.-Gen. Carl Schurz, Delivered February 12, 1864; <http://www.wisconsinclub.com/fw/main/History-4.html> (viewed January 15, 2013); Quiner, Edwin Bentley, “The Military History of Wisconsin: a Record of the Civil and Military Patriotism of the State,” in *The War for the Union* (Clarke & Co., Chicago, IL, 1866); Pula, James S., *The Sigel Regiment: a History of the 26th Wisconsin Volunteer Infantry, 1862-1865* (Savas Publishing Co., 1998); “Byron Kilbourn Hall is Dedicated,” *Milwaukee Free Press*

(February 1, 1911); “Peter Engelmann Hall is Dedicated,” *Milwaukee Free Press* (February 9, 1912); “Men of Milwaukee: Gen. F.C. Winkler,” *Evening Wisconsin* (August 1916); “City Will Offer Tribute Sept. 14 at Juneau Grave,” *Milwaukee Sentinel* (September 1, 1918); “Lincoln's Tragic Death,” *West Bend News* (April 21, 1915); “Milwaukee Pays Tribute to Juneau's Memory as Founding Is Celebrated,” *Milwaukee Sentinel* (September 14, 1918); “Union of Two Clubs: Germania and Deutscher Become One,” *Milwaukee Sentinel* (February 14, 1897); “Old Settlers' Club Honors Gen. Winkler,” *Milwaukee Journal* (March 15, 1918); www.russcott.com/rscott/26thwis/26pgm1n3.htm; <http://www.wisconsinhistory.org/whi/fullRecord.asp?id=80902> (viewed January 11, 2013).

²1838 was ten years before the German Revolution—the

premise and motivations of which play important roles in both Milwaukee's and Winkler's identity and history.

³President Lincoln authorized General Sigel to raise twelve infantry regiments from among German populations. He asked Wisconsin's Governor Saloman to raise one of the regiments; Saloman in turn entrusted the formation to Milwaukee lawyer William Jacobs. A full regiment was raised and mustered from around the state on Sept. 17, 1862. The 26th Regiment took basic training at Milwaukee's Camp Sigel, located within the contemporary street boundaries of Irving Place, Kane, Oakland, and Farwell. William Jacobs served as the regiment's colonel. Its 11 companies consisted almost exclusively of men of German birth or parentage.

continued page 22

Recusal continued from p. 15

determinative. Apart from the benefit such a mechanism would confer upon litigants and the common law functions of the judicial system, it could also be expected to reduce the tensions inherent in the other aspects of recusal, such as the substantive standard and procedure for its application.

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¹*Donohoo v. Action Wisconsin, Inc.*, 2008 WI 110, ¶¶ 1–2, 314 Wis. 2d 510, 754 N.W.2d 480.

²*State v. Henley*, 2011 WI 67, ¶ 25, 338 Wis. 2d 610, 802 N.W.2d 175; see also *Polsky v. Virnich*, 2011 WI 69, ¶ 4, 335 Wis. 2d 555, 804 N.W.2d 80 (the Court “does not have the power to remove a justice from participating in an individual proceeding, on a case-by-case basis”) (discussing *Henley*).

³See, e.g., *Phillips v. U.S. Bank Nat. Ass’n*, 2010 WI 131, 329 Wis. 2d 639, 791 N.W.2d 190; *Hornback v. Archdiocese of Milwaukee*, 2008 WI 98, 313 Wis. 2d 294, 752 N.W.2d 862; *Wisconsin Realtors Ass’n, Inc. v. Town of West Point*, 2007 WI 139, 306 Wis. 2d 42, 743 N.W.2d 441; *Heikkinen v. United Services Auto. Ass’n*, 2007 WI 124, 305 Wis. 2d 68, 739 N.W.2d 489; *Guzman v. St. Francis Hospital, Inc.*, 2000 WI 34, 234 Wis. 2d 170, 609 N.W.2d 166; *Wisconsin Bell, Inc. v. Public Service Com’n of Wisconsin*, 2005 WI 23, 279 Wis. 2d 1, 693 N.W.2d 301. This list is by no means exhaustive and is not necessarily representative.

⁴*Compare In re Gableman*, 2010 WI 62, 325 Wis. 2d 631, 784 N.W.2d 631 (Prosser, Roggensack, and Ziegler, JJ.), with *In re Gableman*, 2010 WI 61, 325 Wis. 2d 579, 784 N.W.2d 605 (Abrahamson, C.J., Bradley and Crooks, JJ.).

⁵*Blum v. 1st Auto and Cas. Ins. Co.*, 2010 WI 78, ¶ 47, 326 Wis. 2d 729, 786 N.W.2d 78 (discussing *Cook v. Cook*, 208 Wis. 2d 166, 188–89, 560 N.W.2d 246, 255 (1997)).

⁶*Judicial Comm’n v. Prosser*, 2012 WI 69, 341 Wis. 2d 656, 662, 817 N.W.2d 830, 833 (Justice Crooks’ denial of recusal motion) (quoting *United States v. Will*, 449 U.S. 200, 212 (1980)).

⁷*Id.* (quoting *Pilla v. Am. Bar Ass’n*, 542 F.2d 56, 59 (8th Cir. 1976)). Perhaps unfairly, this calls to mind the apocryphal anecdote about a judge who has been given \$100 by counsel for each side to win favor. Prior to ruling, the judge calls counsel into chambers and, revealing the bribes, returns \$50 to each lawyer and declares that the case will be decided on the merits.

Gettysburg continued from p. 21

⁴Schurz was a resident of Watertown, Wisconsin, having been exiled from Germany during its failed revolution. As native Germans, Winkler and Schurz were merely acquaintances in Wisconsin prior to the war. It was not until later, during the war, that Colonel Winkler was attached to Schurz’s military staff and then appointed counsel under Schurz’s command. Apart from his roles as a battlefield commander and strategist, Schurz was a confidante of Lincoln, U.S. Ambassador to Spain, a U.S. senator from Missouri, Secretary of the Interior in the Hayes administration, author of a biography of Henry Clay, president of the National Civil Service Reform League, and an editorial writer for *Harper’s Weekly*. He gave many speeches and lectures, and wrote prolifically. Schurz promoted civil service reform, environmental preservation, and arbitration for the settlement of international disputes; he opposed slavery, inflationary monetary strategies, and U.S. imperialism. Along with his wife, Schurz introduced and promoted kindergarten as an educational reform measure.

⁵The issue under investigation was the Schurz command’s failure to appear to fight until the morning, after the end of one of the few battles in the Civil War conducted at night.

⁶Winkler noted that “when forty-two families of the village were made homeless by the fire of three weeks ago, this house offered them shelter.”

⁷The State of Wisconsin dedicated a monument to the 26th Wisconsin Infantry Regiment at Gettysburg on June 30, 1888.

⁸For example, he served as a delegate from Wisconsin to the 50th anniversary of the Battle of Gettysburg; the 1915 speaker

in West Bend before 500 people for the 50th anniversary of Lincoln’s assassination; the 1918 speaker at the 100th anniversary of Solomon Juneau’s arrival in Milwaukee from Canada; and the 1911 and 1912 dedications, respectively, of Byron Kilbourn Hall and Peter Engelmann Hall in the Milwaukee Auditorium.

⁹He declined an appointment to the office of Attorney General of the Eastern District of Wisconsin.

¹⁰It was also in 1918 that Theodore Roosevelt, returning to the city where he was nearly assassinated five years earlier, honored Winkler during a speech, saying that “I asked that there should be with me on the platform a man who I have always considered a model for me and my sons to follow as an American citizen of the highest and best type, as representing the kind of Americanism I preach—General Winkler.”

¹¹Winkler’s obituary lists him as a president of the Milwaukee Bar Association; however the MBA does not include his name among its presidents.

¹²In that year, the Deutscher Club removed what was a conservatory on the first floor and built a bowling alley; the club also built the Grand Ballroom on the second floor. The bowling alley was removed in 1950 for the main first floor dining room, which is now Alexander’s, the Wisconsin Club’s casual restaurant.

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