



MCBA

Upcoming Events

Beefsteak/Karaoke Contest
Wednesday, April 20th
(See page 7 for details)

Annual Installation of Officers
& Trustees Dinner Meeting
Wednesday, May 25th
(See page 11 for details)

What's Inside

Calendar of Events 2
'The Truck Rear-Ended Me,
Isn't That Enough?' 3
MCBA Opposes 'Final Offer
Arbitration' Pilot Program 4
Top Criminal and Traffic
Cases from 2015 5
Client Communication Getting
You Down? Use the DiSC! 8
On My Mind 12
Unsolicited Advice 13
MCBA Announces
2016 Membership Drive 13
MCBA Open House II 13

The Middlesex
ADVOCATE

The Middlesex County Bar Association Monthly Newsletter
April 2016 · Volume 30, Number 8



A Message from the President
By Craig M. Aronow

A Love-Hate Relationship

Over the last few weeks, I have spent a lot of time talking to lawyers, legislators, members of the public and bar leaders about the Christie-Sweeney judicial vacancy fight and how it should be resolved. When speaking with lawyers about this issue, almost immediately after that conversation ends the outrage over the never ending court access tax/filing fee increases starts. The change in tone shows the struggle that lawyers go through in trying to square their love of our justice system with their disdain for the bureaucracy that runs it.

On the one hand, the vast majority of lawyers have great respect for our Superior Court judges that toil in the trenches of our justice system. They recognize that most judges do the best they can to give lawyers the time they need to properly prepare a case and resolve it. They know that most judges are willing to help the bar by sitting on continuing legal education seminar panels and speaking at engagements to help attract new members. These lawyers fight for our Superior Court judges; protecting the judicial nomination process, lobbying for raises and protesting pension cuts. When Chief Justice Rabner's job was threatened these lawyers rose up and called out the Governor demanding that the executive branch stop interfering with our judiciary.

On the other hand and rightfully so, these lawyers are angered by the constant filing fee increases, the ever increasing pressure to move cases, the expanding AOC, the 'new and improved' programs that are pushed, like the expedited civil track or the baseball

arbitration programs, and the walls that are being built between the lawyers and the judges. The filing fee issue, in particular, is a sore subject, because these lawyers have to explain to their clients the lawyer penalty tax they are paying to have counsel while their pro se spouse effectively gets a filing fee discount for not having a lawyer. Recently, during this fee increase craze, several counties have begun charging filing fees for in limine motions. The Court Rules don't even mention in limine motions, but now there is a fee for them. Many believe, and probably not incorrectly, that between the e-filing and speedy trial/bail reform initiatives the AOC and the Supreme Court simply do not have enough money to pay for all of the expenses that are coming. We will have to see if the filing fee increase bill that died in the last legislative session is brought back. There is also a school of thought that baseball arbitration will increase the de novo rate again resulting in a revenue gain for the courts.

It isn't easy to square, our love of the justice system with our severe dislike of the bureaucracy. It truly is a love-hate relationship. There is no reason to think that the hate part of it will change, at least not unless the AOC bureaucracy shrinks, the court access taxes are reduced and the fair and just resolution of all cases, regardless of their age, is paramount. In any case, the vast majority of lawyers will continue to defend our judges and the system that we have always jealously protected. We will continue to call on the Governor and the Senate to do their jobs, give nominees confirmation hearings and fill the vacancies that are crippling benches throughout the State.

Calendar

The Middlesex Advocate

87 Bayard Street
New Brunswick, NJ 08901
Phone: (732) 828-3433
Fax: (732) 828-5862
www.mcbalaw.com

Newsletter Editor
Brenda Vallecilla, Esq.

Letters to the Editor

We welcome letters from MCBA members responding to recent articles or to events or issues of general concern to the bar.

Commentary Articles

Bar members are invited to submit "op-ed" articles, not longer than 750 words, which take affirmative or negative positions on matters of interest to the bar.

Practice-Oriented Articles

We welcome the submission of substantive law articles, to be limited to 2,000 words or less.

News About People & Firms

MCBA members are invited to submit announcements and photographs of new firms, new hires, promotions, awards, celebrations and other noteworthy events.

Obituaries

Obituaries about Middlesex County lawyers may be submitted and should be 300 words or less.

Materials submitted for publication in *The Middlesex Advocate* should be sent to jcowles@mcbalaw.com and may be edited for style or abridged due to space limits. Photographs must be submitted electronically in jpg format.

> **April 4 - Monday, 8:00 a.m.**

TRIAL PRACTICE BREAKFAST CLE SEMINAR (1.5 Credits) – Rules of Evidence - The Mental Health Server Provider-Patient Privilege. Speaker: Hon. Arnold Natali, Jr., JSC. Cost: \$10-Law Clerks, \$20-Young Lawyers, \$25-Members and \$50-All Others.

> **April 6 - Wednesday, 5:00 p.m.**

FAMILY LAW CLE SEMINAR (3.0 Credits) – Handling Child Abuse and Neglect Allegations in Family Law Cases. Speaker: Allison Williams, Esq. Cost: \$30-Law Clerks, \$45-Young Lawyers, \$55-Members and \$90-All Others.

> **April 7 - Thursday, 5:00 p.m.**

YLC MOTION PRACTICE CLE SEMINAR (2.0 Credits) – The Do's and Don't's of Motion Practice. Speakers: Hon. Vincent Le Blon, JSC; and Law Clerks Ryan Notarangelo (Judge Le Blon), Elizabeth Lautenberg (Judge Happas), David Gonzalez (Judge Toto) and Ryne Spengler (Judge Venezia). Cost: \$10-Law Clerks, \$20-Young Lawyers, \$25-Members and \$45-All Others.

> **April 11 - Monday, 6:00 p.m.**

FAMILY LAW SECTION DINNER MEETING (1.0 CLE Credit) – The Pines Manor, 2085 Route 27, Edison. Domestic Violence Offender Intervention. Speaker: Juli Harpell-Elam, MAEd., LPC. Cost: \$25-Recent Law School Graduates (2014-Present) and \$50-All Others. To RSVP please call Section Chair Evelyn Hartmann, Esq., at 732.750.0050.

> **April 19 - Tuesday, 8:00 a.m.**

YLC FAMILY LAW BREAKFAST CLE (1.5 Credits) – Family Law 101: Case Information Statements. Speakers: Hon. Joseph Paone, JSC and Justine Abrams, Esq. Cost: \$5-Law Clerks, \$10-Young Lawyers, \$15-Members and \$30-All Others.

> **April 20 - Wednesday, 6:00 p.m.**

GENERAL MEMBERSHIP DINNER MEETING – New Jersey Law Center, 1 Constitution Square, New Brunswick. Annual Beefsteak Dinner and Karaoke Contest. Joint meeting with the Somerset County Bar Association. For details see page 7.

> **April 26 - Tuesday, 8:00 a.m.**

TAXATION COMMITTEE CLE SEMINAR (1.5 Credits) - Law Offices of Greenberg & Schulman, 90 Woodbridge Center Drive, Suite 200, Woodbridge. Update on 2016 Heckerling Institute on Estate Planning - Part 4. Speaker: Richard Greenberg, Esq. Cost: \$5-Young Lawyers and \$10-All Others.

> **April 28 - Thursday, 8:00 a.m.**

YLC CIVIL TRIAL PRACTICE BREAKFAST CLE (1.5 Credits) – Depositions from A to Z. Speakers: Tyler Hall, Esq. and Kelley Lavery, Esq. Cost: \$5-Law Clerks, \$10-Young Lawyers, \$15-Members and \$30-All Others.

> **May 4 - Wednesday, 5:30 p.m.**

MCBA/PROVIDENT BANK WOMEN'S FORUM (1.5 CLE Credits) – The Imperia, 1714 Easton Avenue, Somerset. Financial Considerations for Women After Life Changing Events. Speakers: Daria Anne Venezia, Esq.; Angela F. Pastor, Esq.; Maria Romano, VP, Provident Bank; and Valerie Murray, Beacon Trust. Networking and CLE Seminar. Cost: \$15 per person (includes hors d'oeuvres, cash bar and seminar).

> **May 9 - Monday, 8:00 a.m.**

TRIAL PRACTICE BREAKFAST CLE SEMINAR (1.5 Credits) – Pre and Post-Trial Motions. Speaker: Hon. Arnold Natali, Jr., JSC. Cost: \$10-Law Clerks, \$20-Young Lawyers, \$25-Members and \$50-All Others.

> **May 11 - Wednesday, 12:15 p.m.**

"BAR GOES LOCAL" LUNCH MEETING – NJ Law Center, 1 Constitution Square, New Brunswick. Guest speakers: Hon. Bob Smith, Hon. Samuel Thompson, Hon. Kip Bateman and Hon. Nicholas Scutari (invited.). Cost: \$15-Members and \$20-All Others.

> **May 12 - Thursday, 8:00 a.m.**

ELDER LAW CLE SEMINAR (1.5 Credits) – Dead Man Talking. Speaker: Vivian Chern Schnaidman, MD. Cost: \$5-MCBA Young Lawyers, \$10-MCBA Members and \$20-All Others. Light breakfast provided.

> **May 16 - Monday, 5:00 p.m.**

FAMILY LAW SECTION MEETING – Discussion of the New Fee Structure in Family Court. Speaker: Michelle Smith, Esq., Clerk of the Superior Court. There is no fee to attend. To RSVP call 732.828.3433, x. 102.

The MCBA is an approved provider of continuing legal education in NJ and all CLE programs listed above will meet the requirements of the BCLE of the Supreme Court of NJ. All NJ Approved CLE Courses are recognized by NY for CLE credit. All events will be held at the MCBA Office, 87 Bayard Street in New Brunswick unless otherwise indicated. To RSVP go to www.mcbalaw.com or call 732.828.3433, ext. 102.



“THE TRUCK REAR-ENDED ME, ISN’T THAT ENOUGH?”

By Edward J. Rebenack, Esq.

Q. What do car accidents and truck accidents have in common?

A. Perhaps a steering wheel, but not much else when it comes to personal injury

litigation.

Handling truck accident litigation the same way as a garden variety car accident oftentimes fails to maximize the client’s recovery. The regulatory system relating to the trucking industry is vast and at first, may seem somewhat complicated. However, knowledge of the applicable rules and regulations paves the way to successful litigation on behalf of the catastrophically injured client.

Rules of the Road are Different for the Truck Driver

The New Jersey Commercial Drivers License (CDL) Manual provides a wealth of standards applicable to “professional” drivers. Many of the requirements are stated in non-technical terms and thus, make wonderful themes for trial presentation. Section 2 of the New Jersey CDL manual sets forth many of the requirements for safe operation. For example, Section 2.4.1 addresses “Seeing Ahead” and requires, in part:

If a traffic light has been green for a long time, it will probably change before you get there. Start slowing down and be ready to stop.

This Rule actually places the onus on the tractor-trailer driver to anticipate the need to change speeds before the hazardous condition even exists. There are many similar requirements that provide a roadmap for liability claims against the truck driver that do not apply to operation of the private passenger vehicle. Every State has its own CDL manual, however these generally mirror each other and are based upon Federal requirements. Typically it is best to work with the manual issued from the state that also issued the truck driver’s CDL.

Motor Carriers Should not Hide Behind Their “Rogue” Driver

In addition to violations of the truck driver’s requirements, there are many direct causes of action against the trucking company that might apply. These actions go a long way to maximize claim value. The Regulations issued by the Federal Motor Carrier Safety Administration (FMCSA – 49 CFR Parts 300-399) should be consulted when evaluating any trucking claim. These requirements can provide a pathway to liability claims against both the driver and the trucking company. Initial considerations include whether the trucking company meets the definition of “motor carrier.” The gross vehicle weight rating and interstate commerce operations are important factors to evaluate as well. The Regulations impose a catchall liability for anyone arguably involved in specific rule violations. Section 390.13 states that “no person shall aid,

abet, encourage, or require a motor carrier or its employees to violate the rules of this chapter.” Depending upon the circumstances of the crash, independent claims against the motor carrier might include:

- Negligent hiring, training and/or retention of drivers
- Negligent route planning
- Negligent supervision regarding issues such as hours of service violations
- Negligent failure to address conditional/unsatisfactory safety ratings
- Negligent hiring of subcontractor

Show Me the Money

Federal law currently requires a motor carrier transporting non-hazardous property to obtain minimum liability coverage in the amount of \$750,000. This responsibility is generally guaranteed through issuance of the MCS-90 endorsement. The endorsement requires the insurance carrier to protect the public and pay any judgments arising out of the use of the insured’s motor vehicles. It operates similar to a surety bond rather than traditional insurance coverage. The endorsement is triggered by the entry of a judgment and the carrier can then seek reimbursement from the insured motor carrier.

Sign it Up?

Compared to the typical personal lines coverage for a private passenger automobile, the \$750,000 minimum coverage requirement might seem more than adequate. However, the value of many injury claims arising from trucking accidents will exceed this coverage limit. Before accepting representation, it is prudent to investigate the available insurance coverage. Unlike personal lines coverage, a motor carrier is required to disclose the identity of its insurance carriers and coverage limits. This information can be found at www.safersys.org linked through the “Licensing & Insurance” section.

It is also critical to anticipate the need for liability experts and the associated costs. Depending upon the circumstances of the crash, typical experts might include an accident reconstruction expert, a trucking rules and regulations expert and an expert to address human factors, conspicuity and fatigue issues.

Don’t be fooled by the steering wheel, it’s not car accident litigation. With the proper investment of time and resources, truck accident litigation can be a very interesting and rewarding area of practice.

Edward J. Rebenack, Esq., is a partner in Rebenack, Aronow & Mascolo, LLP, with offices in New Brunswick and Somerville. He is a certified civil trial attorney and a past president of the Middlesex County Bar Association.

MCBA Opposes “Final Offer Arbitration” Pilot Program

The Middlesex County Bar Association (MCBA) opposes the “Final Offer Arbitration” Pilot Program (FOA) proposed by the Arbitration Advisory Committee. Our Civil Practice Committee has reviewed the proposal and formulated the response below from plaintiff’s counsel, defense counsel, arbitrators and mediators.

While there is a split of opinions on whether the Rule 4:21A mandatory non-binding arbitration program has been successful with automobile cases, many lawyers believe that it does result in settlement discussions in some cases. We also understand that the de novo rate is about 80%, so 20% of the cases are resolving at the arbitration award. The MCBA applauds the AOC’s effort to re-examine this program and consider new ways to promote settlement. However, there are several elements to the proposed FOA program which the MCBA believes will not advance the AOC’s goal to provide efficient and fair resolution in non-auto bodily injury cases (we expect that there would be a plan to roll the program out to automobile cases at some point). The MCBA has identified the following issues:

Compilation and Analysis of Raw Data: The current proposal provides no insight as to how the results of the arbitrations will be compiled and analyzed to determine if the program should be expanded, discontinued or modified. It also provides no explanation as to how the arbitration result can be correlated with the outcome. Will the program be judged by the number of *de novos* filed; the number of these cases that ultimately go to trial; or the relationship between the award and the ultimate result? How will the data on settled cases be obtained? We do believe that the cases in the program will have an even higher de novo rate than the current program. One party will nearly always believe the other side’s number is unreasonable.

Experience of Arbitrators: The programs on which this pilot is based, the Major League Baseball team salary negotiations and New Jersey Public Employer-Employee Relations Act, concern very specific salary determinations. The arbitrators for these programs are people who are very familiar with the salary ranges and are highly

knowledgeable as to the qualifications required for certain salary levels. In the pilot program, the injuries sustained by plaintiffs and the liability issues inherent in the cases are numerous and varied. A case may be assigned to an arbitrator with very little knowledge of the type of injury or cause of action and therefore the arbitrator would have no reasonable basis upon which to make a decision. There is no suggestion in this proposal that arbitrators would be chosen by specialty; rather it appears to be a random assignment from a pool.

Motivation to Settle: With respect to the Major League Baseball team salary negotiations, both sides have agreed to the FOA procedure and it is binding. Here, the pilot program is being imposed by the AOC without request or agreement by the parties and it is non-binding. There is little motivation for the parties to provide reasonable demands that will move the case toward settlement. With the current program, there is an open and meaningful dialogue about case value and the arbitrator is able to consider the perspective of both parties and their own experience in setting a value. Under the proposed system there would only be two options. This is unlikely to help foster the acceptance of an award or meaningful settlement discussions shortly thereafter.

Duplication: There is already a method of providing a “final offer” in the Court Rules, namely, the Offer of Judgment, R. 4:58. The Offer of Judgment encourages more reasonable demands/offers than the proposed FOA procedure because of the benefits and penalties outlined in the rule.

Multiple Defendants/Contested Liability: Non-auto PI cases often have multiple defendants and issues with contested liability and liability splits. It is unclear how this proposed process would accommodate such cases.

As indicated above, we respect the Court’s effort to develop new programs to encourage settlement, however, we do not believe that this proposal will achieve the desired goal. The current arbitration system and the settlement panels, that many counties are running shortly before trial, are more effective methods.

ATTORNEY DISCIPLINE

Fredric L. Shenkman, Esq. LL.M.

1125 Atlantic Avenue
Atlantic City, NJ 08401
609-572-7330
fshenkman@cooperlevenson.com

Former member, Chair & Secretary
of the New Jersey District I Ethics
Committee

Defending attorneys in disciplinary
matters. Available for Affidavits of
Merit and Expert Testimony in legal
malpractice cases where a Rule of
Professional Conduct is
the standard of care.



NEW JERSEY
DELAWARE
NEVADA

COOPER LEVENSON
ATTORNEYS AT LAW
www.cooperlevenson.com



Annual Top Criminal and Traffic Cases in New Jersey Municipal Courts from 2015

By Kenneth A. Verccammen, Esq.

1. Warrantless auto search permitted on probable cause

State v. Witt, 223 N.J. 409 (2015)

The exigent-circumstances standard set forth in Pena-Flores is unsound in principle and unworkable in practice. Citing Article I, Paragraph 7 of New Jersey's State Constitution, the Court returns to the standard articulated in State v. Alston, 88 N.J. 211 (1981), for warrantless searches of automobiles based on probable cause: The automobile exception authorizes the warrantless search of an automobile only when the police have probable cause to believe that the vehicle contains contraband or evidence of an offense and the circumstances giving rise to probable cause are unforeseeable and spontaneous.

2. Municipal Court improperly admitted into evidence Drinking Driving Questionnaire (DDQ) and Drinking Driving Report (DDR). State v. Kuropchak, 216 N.J. 360 (2015)

The municipal court's admission of the Alcotest results without the foundational documents required by State v. Chun, 194 N.J. 54 (2009) was error. Further, because the DDQ and DDR contained inadmissible hearsay, which may have unduly influenced the municipal court's credibility findings, the matter is remanded for a new trial.

Here, the last semi-annual calibration was completed on January 12, 2010, with simulator solution control lot 09D065. The solution control lot for the control test performed prior to and following the three rounds of breath tests performed on defendant was solution control lot 08J060. Under Chun, the State was required to provide the Certificate of Analysis of the 0.10 Simulator Solution used in defendant's control test. The State, however, mistakenly admitted the Certificate of Analysis for the semi-annual simulator solution control lot 09D065 instead. Additionally, the most recent Calibrating Unit New Standards Solution Report was not admitted into evidence during the State's case. Given that the foundational documents were not admitted into evidence, the State presented no evidence as to the reliability or accuracy of the Alcotest results and, therefore, defendant's conviction of *per se* intoxication was improper.

As for defendant's contention that the DDR and DDQ are hearsay not subject to any exception, the Court observes that hearsay is inadmissible unless it falls into one of certain recognized exceptions. To qualify as a business record, a writing must: (1) be made in the regular course of business, (2) within a short time of the events described in it, and (3) under circumstances that indicate its trustworthiness. Foundational reports for breath testing, with certain qualifications, are admissible under the business record exception to the hearsay rule. Here, however, the DDR contains a narrative account of what the officer saw at the scene and includes factual statements, observations, and the officer's opinions. Thus, the DDR contains inadmissible hearsay. Although the DDQ also does not appear initially to constitute hearsay, it incorporates by reference the DWI report in the "remarks" section and the DWI report, in turn, contains several inadmissible opinions. The DDQ's content thus also rises to the level of inadmissible hearsay and must be excluded. Therefore, the DDR and the DDQ were inadmissible hearsay outside the

scope of the business records exception.

Here, the municipal court heard defendant's testimony concerning the events on the day of the incident, as well as the testimony of Officer Serritella. The court found the Officer's testimony more credible than defendant's and therefore found defendant guilty. The court's credibility determinations, however, were made after the DDR and the DDQ were admitted into evidence, notwithstanding the impermissible hearsay statements they contained, and after the Alcotest results were admitted into evidence despite the lack of requisite foundational documents.

The cumulative effect of the inclusion of the DDR, the DDQ, and the Alcotest results may have tilted the municipal court's credibility findings. Thus, the Court lacks sufficient confidence in the proceedings to sanction the result reached and concludes that the interests of justice require a new trial. It is only because of the unique confluence of events in this case – the inappropriate admission of the Alcotest results as well as the DDR and DDQ – that the Court remands for a new trial. Had the only flaw been the admission of the DDR and DDQ, which contained hearsay, Officer Serritella's testimony would have alleviated much of that problem. Here, however, the cumulative effect of the errors may have tilted the municipal court's credibility findings.

The judgment of the Appellate Division was **REVERSED**.

3. Driver is not subject to criminal driving while suspended if DWI suspension period expired prior to driving. State v. Perry, 438 N.J. Super. 514 (App. Div. 2015)

N.J.S.A. 2C:40-26(a) and (b) make driving while suspended under specified circumstances a fourth-degree crime, punishable by a mandatory minimum jail term of 180 days, where the underlying suspension arose from driving while intoxicated (DWI), N.J.S.A. 39:4-50, and/or refusal to submit to chemical testing, N.J.S.A. 39:4-50.4 (a). The court concluded in these appeals that prosecutions under the statute can be brought only if the act of driving while suspended occurs during the court-imposed term of suspension.

4. Ten year step-down in DWI also applies to refusal. State v Taylor, 440 N.J. Super. 387 (App. Div. 2015)

In 2013, defendant Thomas Taylor entered a conditional guilty plea to refusal to submit to a breath test, N.J.S.A. 39:4-50.2, reserving the right "to appeal [] any and all issues, including sentencing." Although defendant had no prior convictions for refusal, he had two prior convictions for driving while intoxicated (DWI), N.J.S.A. 39-4-50, in 1985 and 1996. The trial court sentenced defendant as a "third offender," using his DWI convictions to enhance the penalty for his refusal conviction.

On appeal, defendant argues that the "step-down" provision of the DWI statute, N.J.S.A. 39:4-50(a)(3), should apply so as to reduce his refusal conviction from a third to a second offense for sentencing purposes since it followed more than ten years after his second DWI conviction. The court agreed and held that where the penalty attendant to a driver's refusal conviction is enhanced by a prior conviction under the DWI statute, fairness dictates that it be similarly reduced by the sentencing leniency accorded a driver under the "step-down" provision of that statute when

(Continued on page 6)

(Continued from page 5)

there is a hiatus of ten years or more between offenses.

5. Police did not have reason to order passenger out of car.

State v Bacome, 440 N.J. Super. 228 (App. Div. 2015)

Based on speculation that defendant and a passenger in his vehicle were involved in illegal drug activity, police officers attempted to follow but lost sight of the vehicle in or near Newark and waited in Woodbridge for its return. Once the vehicle returned, the officers stopped it, ostensibly because the passenger was not wearing his seatbelt. On approaching, an officer, who did not testify, observed defendant reach under his seat. Both driver and passenger were then ordered out of the vehicle; after the passenger exited, an officer was able to observe in plain view materials that suggested drug usage. Based on that observation, a warrantless search of the vehicle ensued, and illegal drugs were found.

Because defendant's mere entry into and departure from Newark did not permit a reasonable suspicion of illegal drug activity and because the State had failed to present facts "that would create in a police officer a heightened awareness of danger" if the passenger were allowed to remain in the vehicle, State v. Smith, 134 N.J. 599, 618 (1994), the court found no sufficient ground for the ordering of the passenger out of the vehicle and reversed the denial of the suppression motion.

Jail Alternative allowed in 3-40(e) and 6B:2. State v. Toussaint, 440 N.J. Super. 526 (App. Div. 2015)

When a defendant is convicted under N.J.S.A. 39:3-40(e) (being involved in an accident that causes injury to another, while driving with a suspended license), or N.J.S.A. 39:6B-2 (driving without insurance), the court has discretion to permit the defendant to serve the sentence in an electronic monitoring program instead of in the county jail. In construing those provisions, we distinguished State v. French, 437 N.J. Super. 333, 335 (App. Div. 2014), cert. denied, 200 N.J. 575 (2015), which held that N.J.S.A. 2C:40-26(c) did not permit sentencing alternatives for driving during a second or subsequent license suspension imposed for DWI.

No home release or wristlet if mandatory 180 jail. State v Harris, 439 N.J. Super. 150 (App. Div. 2015)

Following the recent opinion in State v. French, 437 N.J. Super. 333 (App. Div. 2014), the court held that a defendant convicted of violating either N.J.S.A. 2C:40-26a or N.J.S.A. 2C:40-26b must be sentenced to at least 180 days in jail without parole. French held that a sentence to an in-patient drug rehabilitation program in lieu of jail was an illegal sentence under section 26b. The court concluded that, under section 26a or 26b, a sentence to any other non-custodial alternative program, such as a home detention program (HEDS) or a community service program (CSLS), is likewise illegal.

8. Bias statute requires proof that defendant intended bias, not victim perception; statute unconstitutional. State v. Pomianek, 221 N.J. 66 (2015).

Subsection (a)(3) of the bias-intimidation statute, N.J.S.A. 2C:16-1, fails to give adequate notice of conduct that it proscribes, is unconstitutionally vague, and violates the Due Process Clause of the Fourteenth Amendment.

9. Police should not have ordered driver out of car on traffic stop. State v Keaton, 222 N.J. 438 (2015)

The law enforcement officer was required to provide defendant with the opportunity to present his credentials before entering the vehicle. If after giving a defendant that opportunity, he or she is unable or unwilling to produce the registration or insurance information, only then may an officer conduct a search for those credentials. Here, because defendant was never provided with such an opportunity, the seizure of the contraband was unlawful under the plain view doctrine. Further, the community-caretaking doctrine was inapplicable because there was no need for an immediate warrantless search to preserve life or property.

10. Court should have adjourned case for defendant to keep own private attorney. State v Martinez, 440 N.J. Super. 537 (App. Div. 2015)

The court examined the tension between a trial court's discretionary "authority to control its own calendar" by denying an adjournment request and the need to safeguard "a defendant's Sixth Amendment right to a fair opportunity to secure counsel of his own choice" in light of State v. Miller, 216 N.J. 40, 62, 65 (2013). Guided by the framework for review set forth in State v. Hayes, 205 N.J. 522 (2011), the court concluded that denial of defendant's request to adjourn trial, without weighing the facts presented supporting the requested adjournment, reflects an arbitrary exaltation of expedience in case processing at the expense of defendant's right to counsel. Accordingly, the court vacated the judgment of conviction and remands the matter for a new trial.

11. Police needed warrant for blood taking after DWI event in 2010 case; no good faith exception for police actions. State v. Adkins, 221 N.J. 300 (2015)

McNeely's pronouncement on the Fourth Amendment's requirements must apply retroactively to cases that were in the pipeline when McNeely was issued. Accordingly, the Appellate Division's judgment is reversed. The matter is remanded to allow the State and defendant the opportunity to re-present their respective positions on exigency in a hearing on defendant's motion to suppress the admissibility of the blood test results. In that hearing, potential dissipation of the evidence may be given substantial weight as a factor to be considered in the totality of the circumstances. The reviewing court must focus on the objective exigency of the circumstances faced by the officers.

12. Accident with unconscious driver was exigency for police to take blood. State v Jones, 441 N.J. Super. 317 (App. Div. 2015)

In Missouri v. McNeely, 133 S. Ct. 1552 (2013), the United States Supreme Court considered whether "the natural metabolism of alcohol in the bloodstream presents a *per se* exigency that justifies an exception to the Fourth Amendment's warrant requirement for nonconsensual blood testing in all drunk-driving cases." *Id.*, 133 S. Ct. at 1556, (emphasis added). Concluding that fact alone did not present a "*per se* exigency," the Supreme Court held, "consistent with general Fourth Amendment principles, that exigency in this context must be determined case by case based on the totality of the circumstances." *Id.* This matter was summarily remanded to the court by the Supreme Court for reconsideration in light of the Court's decision in State v. Adkins, 221 N.J. 300 (2015), holding that the totality of the circumstances analysis described in McNeely should be given pipeline retroactivity.

(Continued on page 10)



Wednesday, April 20th
6:00 p.m.
New Jersey Law Center
1 Constitution Square
New Brunswick



Program

Cocktail Hour - 6:00 p.m.
Passed Hors d'oeuvres
Open Bar (Beer, Wine & Soft Drinks)

Dinner - 7:00 p.m.
Traditional Beefsteak Dinner:
Tossed Salad, Filet Mignon served on Thin French Bread, French Fries, Fruit Salad, Mini-Dastry & Cookie Trays, Beer, Wine, Soft Drinks, Coffee & Tea.
(We Have Non-Beef Alternatives, too.)

Dinner Program - 7:45 p.m.

Karaoke Contest

Cost:
MCBA Members - \$65
Non-MCBA Members - \$75
Law Clerks - \$35

Please Reserve Early!
RSVP Online @
www.mcbalaw.com
Contact: 732-828-3433, x.102

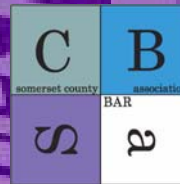
Annual Beefsteak Dinner

Wednesday, April 20, 2016
New Jersey Law Center, New Brunswick
Joint Dinner with the Somerset County Bar Association

Karaoke Contest



vs.



Master of Ceremonies
John P. Paone, Jr., Esq.

This year's MCBA contestants include Lisa Siegel, Craig Rothenberg, Michael Drecolias, Elizabeth Rozin-Golinder, Irene Fiorello, Jacob Davidson, Valerie Shore, Jeremy Jackson and Eugene Wishnic.

Guest Judges



Craig M. Arnow, Esq.
MCBA President



Special Mystery Guest



Jeralyn Lawrence, Esq.
SCEA President

Awards for Best Singers! | RSVP Today!

Event Sponsors

Provident Bank

Couch Braunsdorf Insurance Group

Annual Beefsteak Dinner/Karaoke Night - 4/20/2016

Name(s): _____

Telephone #: _____ Email: _____

Credit Card Account #: _____ Sec Code: _____

Exp. Date: _____ Name on Card: _____

Billing Address: _____

Payment Amount: \$ _____ Signature (for Credit Card Payment Only): _____

Method of Payment

- Check Enclosed
- MasterCard
- Visa
- American Express

Cost to attend is \$65 for MCBA & SCBA Members, \$75 for Non-Members and \$35 for Law Clerks. Make checks payable to "MCBA" and mail registration form to: Middlesex County Bar Association; 87 Bayard Street, New Brunswick, NJ 08901. **Deadline for advance reservations - Monday, April 18th.** Cancellations must be made 24-hours in advance of the meeting to receive a refund. To reserve by phone call (732) 828-3433, x. 102, to reserve by fax send to (732) 828-5862 or to reserve by e-mail send to jcowles@mcbalaw.com.

Client Communication Getting You Down? Use the DiSC!

by Taylor Madaffari, Provident Bank



Sometimes, the workplace can feel like a jungle: your customers like different species of the animal kingdom, living in niche habitats, speaking different languages.

Unfortunately, a one-size-fits all approach doesn't work when it comes to customer interaction. You can't mass market, you can't provide template business solutions, you can't treat your customers as data. Treat them instead as the individuals they are, with different motivations, needs, and fears.

That means you'll have to connect on a human level, adapting at the drop of a hat to market, communicate, and problem solve person-to-person. That sounds hard, doesn't it?

Don't go bananas and start slinging mud just yet. There's a highly-evolved, 21st century personality assessment that may be able to pull you out of the jungle's primordial ooze: the DiSC®, which can give you detailed insight into the behavior and communication styles of your customers.

Dominance

This first behavior describes Type A's, those high-energy, driven, early bird people who seek total control and power in their lives. They shape their environment by overcoming opposition to accomplish results and are:

- Competitive
- Demanding
- Results-Oriented
- Assertive
- Independent
- Ambitious
- Strong
- Brave

When meeting, communicating, or doing business with a client who is a D, it's important to be:

- Organized
- Clear
- Quick
- Specific
- Businesslike

Dominant people respond best when you provide options and don't push for final decisions. Keep in mind that building personal relationships is ancillary to them.

Influence

Influencers are masters of persuasion. These silver-tongued social butterflies care a lot about what other people think of them and shape their environments by influencing others. I's are often:

- Social
- Spontaneous
- Talkative
- Energetic
- Carefree
- Emotional
- Charismatic
- Inspiring

When meeting, communicating, or doing business with a client who is an I, it's important to be:

- Casual
- Friendly
- Relaxed
- Sociable
- Informal
- Well Organized

Influencers respond best when you ask questions to get them back on track and spend time building a personal relationship.

Steadiness

Stable and even-keeled, S's are the level keeping the group on an even plane. They are patient, persistent, and thoughtful and believe in coop-

erating/collaborating with others to complete a task. They are:

- Supportive
- Sincere
- Warm
- Reliable
- Careful
- Patient
- Loyal
- Amiable

When meeting, communicating, or doing business with a client who is an S, it's important to be:

- Easy Going
- Relaxed
- Sincere
- Personal
- Low Key
- Informal
- Positive

Steady people respond best when you avoid meeting too fast, allow them to make decisions, and build a personal relationship.

Conscientiousness

This behavior describes those obsessive-compulsive types, who revere structure and organization. They believe in working conscientiously within the bounds of existing circumstances to ensure quality and accuracy. C's are often:

- Analytical
- Perfectionist
- Systematic
- Thorough
- Cautious
- Distant
- Logical
- Controlled

When meeting, communicating, or doing business with a client who is a C, it's important to be:

- Well Prepared
- Straightforward
- Specific
- Patient
- Factual
- Formal

C's respond best when you present information in an orderly, step-by-step process. Personal relationships are not a priority.

A Little More Conversation

Can you identify clients who possess these traits? Armed with this knowledge, how can you better communicate with them?

American Cancer Society - Relay for Life – Old Bridge June 17-18, 2016

Join Team "Family and Friends of Jim O'Grady"

James F. O'Grady, Jr., was a MCBA member and a partner at Lombardi & Lombardi, PA in Edison until his passing on March 1, 2012 after a year-long battle with esophageal cancer. Jim was a wonderful father to his children Nicole and Danny, and husband to his wife Jeanine.

Please consider joining Jim's family and friends on June 17-18 starting at 5pm to support Team O'Grady as they help fight the good fight. You can sign up and/or make a donation at the following web-page:

<http://relay.acsevents.org/site/PageServer?pagename=relay>

Thank you in advance for your consideration.



THE BEST BANKING

BENEFITS AROUND. CASE CLOSED.

As a member of the Middlesex County Bar Association, you get access to our exclusive Attorneys' First Banking Program—a package designed specifically for New Jersey attorneys, with preferred rates and specialized services.

FOR YOUR FIRM

- BusinessAdvantageSM Relationship Package with 1000 FREE transactions per statement period
- Preferred rates and fees for commercial term loans and commercial mortgages
- 72-hour turnaround for a loan/line/mortgage term sheet
- Expedited underwriting and approvals
- FREE outgoing and incoming wire transfers

FOR YOUR EMPLOYEES

- Provident Ca\$h Back Checking with unlimited cash back, no monthly fees, and no minimum balance*
- FREE financial review
- Unlimited domestic ATM fee refunds
- Cash rewards for debit card purchases and paying bills online

*Minimum opening deposit \$50



FOR ALL THE DETAILS, CONTACT Cynthia Senatore
MCBAaffinity@providentnj.com or 732 590 9187

 **Provident**BANK

(Continued from page 6)

This was not a routine DWI case in which the dissipation of blood alcohol was the sole basis for determining that an exigency existed. To the contrary, defendant caused a multiple-vehicle accident at a busy intersection and crashed into a building, raising concern the building would collapse. Numerous police, firefighters and emergency medical services personnel responded to the scene, where the investigation took hours. It took one-half hour to extricate defendant, who was unconscious, from her badly damaged vehicle. Both she and a passenger in another car had to be transported to the hospital.

Viewing the totality of the circumstances, the court is satisfied that an objective exigency existed and that the officer "might reasonably have believed that he was confronted with an emergency, in which the delay necessary to obtain a warrant, under the circumstances, threatened 'the destruction of evidence[.]'" Schmerber, supra, 86 S. Ct. at 1835. The court finds no reason to disturb our prior decision reversing the order that suppressed the results of the blood sample analysis.

13. Defendant asking to speak with uncle counts as Miranda right to remain silent. State v. Maltese 221 N.J. 611 (2015)

Because defendant's statement to his uncle occurred after officers violated his Fifth Amendment right to remain silent, that statement is inadmissible. Defendant's subsequent statement to police was fruit of the unconstitutionally obtained statement to his uncle and must also be suppressed. Thus, defendant's convictions for manslaughter and murder are reversed. His other convictions are affirmed because they are supported by evidence independent of the suppressed statements. On remand, the trial court shall conduct a pretrial hearing to determine whether the physical evidence obtained as a result of defendant's suppressed statements is admissible under the inevitable discovery exception to the exclusionary rule.

14. Odor of Marijuana probable cause for search. State v Myers, 442 N.J. Super. 287 (App. Div. 2015)

The odor of marijuana has long been held to provide probable cause of the commission of a marijuana offense. Under the New Jersey Compassionate Use Medical Marijuana Act (CUMMA), N.J.S.A. 24:6I-1 to -16, registered qualifying patients receive registry identification cards, and their medical use of marijuana as authorized by the CUMMA is exempt from criminal liability under N.J.S.A. 2C:35-18. Where, as here, there is no evidence that the person suspected of possessing or using marijuana has a registry identification card, the odor of marijuana still provides probable cause of the commission of a marijuana offense. Here, the odor of burnt marijuana emanating from defendant's car gave the officer probable cause to arrest him for a marijuana offense committed in the officer's presence.

15. Court permits police to ignore guidelines requiring Alcohol influence report be given to DWI suspects. State v Sorensen, 439 N.J. Super. 471 (App. Div. 2015)

After the Law Division suppressed defendant's blood alcohol content (BAC) results, it sentenced her on her guilty plea to driving under the influence. Nonetheless, the State's appeal of the suppression was not barred by double jeopardy because defendant had entered a conditional plea to, and been sentenced for, the *per se* violation in Municipal Court.

The Law Division suppressed the BAC results because the Alcotest operator did not give a copy of the Alcohol Influence Report (AIR) to the arrestee in the police station. Although State v. Chun, 194 N.J. 54, 82 (2008), said the operator "must" do so, that comment about recommended Alcotest procedure did not override the statutory standard requiring the police only to give a copy of the breath test results upon request. N.J.S.A. 39:4-50.2(b). In any event, the timing of copy delivery does not affect the validity of the test results. Moreover, police must advise arrestees of their ability to request a copy and to get an independent test. Therefore, suppression is not warranted in the absence of prejudice. Furthermore, a suppression remedy should not be imposed retroactively.

Judge Sabatino concurs in the result. Given the time-sensitive dissipation of alcohol in the bloodstream, he believes Chun sensibly requires the operator to provide a copy of the AIR contemporaneously, consistent with the policies of the Attorney General and the State Police, and that the statute does not foreclose affording such added procedural protection to tested drivers. He agrees that suppression in this case and retroactive relief are not warranted.

16. Physical contact not required if leaving the scene. State vs. Sene __ N.J. Super. __ (App. Div. 2015) A-2256-13T1

The question of first impression presented on this appeal is whether contact between defendant's vehicle and a victim is a necessary element of leaving the scene of an accident in violation of N.J.S.A. 2C:11-5.1. Defendant was driving a taxi when a pedestrian stepped into his lane of traffic. The pedestrian fell into the adjoining lane of traffic and was killed when she was run over by another vehicle. Defendant did not stop his taxi at the scene and left without speaking to anyone. A jury convicted him of leaving the scene of a fatal motor vehicle accident under N.J.S.A. 2C:11-5.1. On appeal, defendant contends that a necessary element to the crime is contact between his vehicle and the victim. The Court disagrees and holds that such contact is not an element of this crime. The Court also holds that N.J.S.A. 2C:11-5.1 is not unconstitutionally vague. We, therefore, affirm defendant's second-degree criminal conviction.

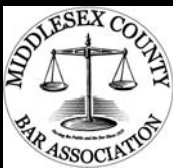
17. Double jeopardy bars crime prosecution if a plea is given in municipal court. State v Miles, __ N.J. Super. __ (App. Div. 2015) A-2692-12T1

The defendant was arrested during an undercover drug operation. Defendant was charged on a warrant with possession of a CDS with intent to distribute on or near school property. Defendant was also charged on a summons with a disorderly persons offense of possession of marijuana.

After defendant was indicted, he appeared *pro se* in municipal court via videoconference after being incarcerated for a family matter. The disorderly persons drug offense, which was not joined with the indictable offense, was pending. Without the presence or participation of the State, but in accord with the existing "practice," the judge amended the offense to loitering and then took a plea from defendant. Predicated upon his plea, defendant sought to bar the prosecution of the indictable charge.

The court held that the subsequent prosecution and conviction on the indictable charge was barred under the "same evidence" test, which is still recognized under state constitu-

(Continued on page 14)



Annual Installation of 2016-17 Officers & Trustees

Wednesday, May 25, 2016
The Grand Marquis, 1550 Route 9 South, Old Bridge

Date: May 25, 2016



The Grand Marquis
1550 Route 9 South
Old Bridge

Event Agenda

Pre-Dinner CLE Seminar
4:30 p.m.

Cocktails/Networking
6:15 p.m.

Passed Hors d'oeuvres/Food Stations
Entertainment by
Brunswick Brass Trio and
the Ian Young Jazz Quintet

Dinner & Program
7:30 p.m.



2016 Arthur H. Miller
Lawyer Achievement Award
to
Hon. Bradley J. Ferencz (Ret.)

Installation of 2016-17
Officers & Trustees



MCBA Member Cost:

- \$30: CLE Seminar Only
- \$85: Dinner Only
- \$95: Dinner & CLE Seminar

Non-Member Cost:

- \$50: CLE Seminar Only
- \$95: Dinner Only
- \$110: Dinner & CLE Seminar

* \$5 extra at the door and for payment made after the event

To RSVP go to: www.mcbalaw.com
or call 732.828.3433 x. 102



William P. Isele
President-Elect



Andrea J. Sullivan
President



Joanne Vos
First Vice-President



Daria Anne Venezia
Second Vice-President



Daniel H. Brown
Treasurer



Eugene S. Wishnic
Secretary

Trustees



Marc Gaffrey



Jack Gillick



Meryl Gonchar



Jay Mascolo



Jennifer Selletti



Elliot Solop



Charles Whelan

Pre-Dinner CLE Seminar

#Professionalism&SocialMedia@AvoidingCommonMistakes#

Panelists:



Maja Obradovic, Esq.
Greenbaum Rowe Smith & Davis



Hon. Frank Ciuffani
Presiding Judge, General Equity



Willard Shih, Esq.
Wilentz Goldman & Spitzer



Fredric Shenkman, Esq.
Cooper Levenson

This program has been approved by the Board on Continuing Legal Education of the Supreme Court of NJ for 2.0 hours of total CLE credit. Of these, 2.0 qualify as hours of credit towards ethics/professionalism. (Please note that Approved CLE Courses in NJ are Recognized for CLE Credit in New York.)

Event Sponsors

Corodemus & Corodemus | Greenbaum Rowe Smith & Davis | Rebenack Aronow & Mascolo
Wilentz Goldman & Spitzer | Couch Braunsdorf Insurance Group | Provident Bank
Paone Zaleski Brown & Murray | Volk Insurance Group

Annual Installation Dinner Meeting - May 25, 2016

Name(s): _____

Address: _____

Telephone #: _____ Email: _____

CC#: _____ Exp. Date: _____ Sec. Code: _____

Amount Authorized: \$ _____ Name on Card: _____

Signature (for Credit Card Payment Only): _____

| Method of Payment |
|-----------------------------------------|
| <input type="checkbox"/> Check Enclosed |
| <input type="checkbox"/> Visa |
| <input type="checkbox"/> MasterCard |
| <input type="checkbox"/> Amex |

Cost to attend: See pricing above. Make checks payable to "MCBA" and mail registration form to: Middlesex County Bar Association; 87 Bayard Street, New Brunswick, NJ 08901.
Deadline for advance reservations - Friday, May 20th. Cancellations must be made by May 23rd, 12:00 noon to receive a refund. To reserve by phone call (732) 828-3433, ext. 102, to reserve by fax send to (732) 828-5862 or to reserve by e-mail send to jcowles@mcbalaw.com.



On my mind . . .

by Linda Lashbrook

The juggernaut rolls on . . .

So it's a leap Year. What is it about Leap Years that causes me such angst and nervousness, irrational procrastination, midnight snacking? Oh, right. Leap Years are election years. Check the supply of blood pressure meds and Tums.

Anyone would have to admit, however, that this year is worse than most. The one for 2008 was fun, and 2012 was a walk in the park. And right now, what's on my mind is obviously the same thing that's on everyone's mind: this ghastly political campaign. It started out almost whimsical, with a dozen or so assorted Republicans forming two lines for the head table and the kids' table at debates. But actually, they weren't really that assorted; nobody was much of a centrist, let alone left-leaning, probably because the Tea Party had pretty much culled anyone who strayed too far from the extreme right.

So I shouldn't have been surprised when the group that made the finals consisted basically of 3 conservative extremists and a rather wishy-washy governor who might have been a moderate had he not been so anti-choice, intended to defund Planned Parenthood, supported a balanced Budget amendment to the Constitution, been so gung-ho for the death penalty and more prisons, and remarked that the Constitutional idea of separation of church and state is "one of the goofiest misinterpretations" of the founders' intent.¹ So that's how Kasich got to the second Super Tuesday in March, and staved off defeat for at least a little while by winning his home state.

Two of the others, Cruz and Rubio (I think I uncharitably referred to them as Tweedledum and Tweedledee last month), were cut from the same Tea Party cloth. Or dishtowel, if you prefer. Each tried to outdo all the others in his devotion to the anti-government, anti-Obama, anti-choice, climate-change denial, anti-gun regulation, and the rest of the litany of twenty-first century right-wing rhetoric. But Rubio's efforts to seem the "nicer" candidate didn't do the trick. His debate performances showed up the shallowness of his understanding of the world, and his attempts to make jokes at the expense of Donald Trump's (henceforth the Clown Candidate) physique backfired badly; even his own children were embarrassed. At any rate, his failure to win over the Republicans in his own state of Florida on March 15 sounded his death knell for this year.

Cruz stands out a little more, if only because of his crystal-clear nastiness, and his well-known reputation as the most hated person in the Senate. He apparently has no friends. Contrasted with this facet of his personality, though, is his smarmy, religious-y style of campaigning. I don't know whether evangelicals or other actually religious people are taken in by his Holy Name-dropping, and his alternation between praying that the deity will grant him success, and his declarations that the Lord has in fact guided his every move. He is rabidly anti-immigrant, one of the few ways in which he disagrees with Rubio. As the apparent runner-up, he poses a quandary for what are currently referred to as Establishment Republicans, who are, according to all the me-

dia, looking for ways to avoid nominating the Clown Candidate. Evidently, Cruz is not very desirable as a fallback position.

Which brings us to the elephant in the room, a metaphor that seems only too apt, because the Clown Candidate is so hugely present in the media. There's nowhere to look without seeing that face on your screens, magazines, newspapers. It's bad enough for me – I'm a Democrat – but I can't help thinking it's worse for Republicans. What are they thinking? "This is what we're stuck with? Let me off this bandwagon?"

As one commentator has it:

The notion that Trump could actually be the Republican candidate for president is earth shattering in and of itself but the possibility that he could also be elected President is a mind boggling gamble, at best, and a clear and present danger to America and the world, at worst. . . . [L]ike Trump, Hitler and Mussolini were also regarded initially as clowns.²

It was surprising to me how often in the print and on-line media the Clown Candidate's name was juxtaposed with those of Mussolini and Archie Bunker – thousands of times on Google. When I went looking for a quote I'd heard on the radio that likened the Clown to a cross between Archie Bunker and Mussolini, I didn't find it, but I found hundreds of articles declaring that his philosophy echoes Archie's, and that his description of how to govern America evokes Il Duce. There's even a quiz site with quizzes on "Who said this – Trump or Mussolini?" and "Who said this – Trump or Archie Bunker?"

Some of the Clown's shenanigans, though, seem genuinely his own. The way he incites violence – explicitly – at his rallies, and then simply denies having done so. His wanting to register all Muslims, one night, and then calling for excluding all Muslims the next. One writer quips that people now go to hockey games hoping a Trump rally will break out.³ He polishes his self-image as an authoritarian, all-powerful leader; the chants, the hand raising, the boasts that he will abolish this, stop that, kill them, punish those, when everything he vows to do is unconstitutional, physically or politically impossible or a war crime.

I have to remember: this country made it through Huey Long, Father Coughlin, McCarthy and HUAC (albeit not without faculty loyalty oaths) and George Wallace, so the chances are we'll get through this, too. I've got my fingers crossed.

And meanwhile...

On the day I'm writing this, the President has just nominated Judge Merrick Garland to be the next Supreme Court Justice, replacing the late Antonin Scalia. In an ordinary world, he'd be confirmed with a minimum of drama, since he's already been soundly confirmed for the DC Court of Appeals and the Chief Judgeship of that court. When he was on the short list a "half-dozen years ago, Orrin Hatch, perhaps the single most influential Republican senator in regard to judicial nominations, declared that Merrick would be 'a consensus nominee,' and that further-

(Continued on page 13)

Unsolicited Advice for Law & Life

by Hon. John A. Jorgensen, II, JSC

Call your friends. We are all social animals that need to be connected with others in order to thrive and survive. Fortunately we have developed a number of different friendships over the years. It is so important to keep in touch with your friends. Make a list of everybody's birthday so you can give them a call or send a note on their day (won't that be a nice surprise for them?!). Another suggestion is to plan each week to call at least one friend that week (put it into your daily/weekly to do list). Schedule outings, dinners, lunches, etc. to keep in touch with your friends. Take the steps necessary to keep your friendships alive and vibrant.

Visit the court/judge before your case is scheduled. In college when we traveled to play another school in basketball we always had a "shoot around" before the actual game. That was a way to become familiar with the court and its surroundings. When the game started we were already accustomed to the floor and baskets, so we weren't caught off guard. The same holds true with experiencing a new courtroom. If at all possible go there before the day of your scheduled hearing. Try to talk with the court clerk/sheriff's officers/law clerk to see what that particular judge's "rules" are. For example, you don't want to find out during your hearing with your client present that you should have pre-marked your documents, or not pre-marked them. The client will think you're not prepared. Similarly, you don't want to be wandering around the courthouse halls with your client trying to find the right courtroom. The more you are aware of the courthouse surroundings and the particular judge's preferences the more comfortable you will be in presenting your case.

(Continued from page 12)

more there was 'no question' that he could be confirmed."⁴ Professor Paul Campos thinks there will be plenty of drama now, because the nomination of such a clearly acceptable and qualified candidate, if refused a hearing by the Senate Republicans, will be easy to publicize in opposition campaigns, and could make re-election of the 24 who are up for election this year a lot more difficult. Again, we can only hope.

I'm off for spring break in California, but hope to see you at the April 20 Beefsteak and Karaoke Dinner. It will be held at the New Jersey Law Center, and will be a joint meeting with our friends from the Somerset County Bar Association. Meantime, happy spring!

¹ Every Other Monday, by John Kasich, p.195-196, June 15, 2010

² Chemi Shalev, "Trump's Post-Modernist Campaign on Behalf of Archie Bunker/JR Ewing Wannabes," Ha'aretz, Feb. 26, 2016

³ <http://wonkette.com/596992/trumps-las-vegas-rally-sounded-a-lot-better-in-the-original-german#wPXVtb2R4Y4M7SPF.99>

⁴ Law Professor Paul Campos, "Obama's Gutsy Godfather Move," Salon.com March 16, 2016

Middlesex County Bar Association Launches 2016 Membership Drive!

The legal profession is under attack by commercial interests which threaten to infiltrate the practice of law by seeking the legalization of non-lawyer legal services. Now is the time to protect the profession and support the Bar Association!

The MCBA is proud to announce that it is launching a Membership Drive and invites you to join us in our efforts to protect the profession. There is strength in numbers!

If you are already a member, you know the MCBA provides its members with a variety of benefits and services including affordable and accessible CLE, opportunities to network with other attorneys and members of the Judiciary, and access to our ABA-approved lawyer referral service, practice area committees, mentor program, banking program and many more. And you also know that we have been a leading voice in NJ against the efforts to legalize non-lawyer legal services. If you are not yet a member please visit our website at www.mcbalaw.com for a complete list of all that we do for the Middlesex County legal community as well as access to a Membership Application.

Through June 30th, **existing members who refer a new member AND new members who join the MCBA** will be entitled to receive a FREE 2 credit CLE-approved seminar of their choosing.

Do your part to help us protect the future of the profession – renew your membership and encourage a non-member colleague to join the Middlesex County Bar Association - TODAY!

Save the Date – June 9, 2016!

Please join us for

MCBA OPEN HOUSE II

on

Thursday, June 9, 2016

5:30 pm to 7:30 pm

Law Offices of Greenbaum Rowe Smith & Davis, LLP

Metro Corporate Campus

99 Wood Avenue South, 4th Floor, Iselin

Complimentary Beer, Wine and Cheese

Join your colleagues for an evening of networking and information about the MCBA. Meet MCBA Officers, Trustees and Committee Chairs and learn about the benefits, discounts and programs available to MCBA members.

(Continued from page 10)

tional principles. The court reasoned that the "fundamental fairness" doctrine did not apply, notwithstanding the State's failure to join the disorderly offense with the indictable charges, and defendant's reasonable expectation that his plea to the disorderly offense charge resolved all charges that arose out of his arrest.

18. Protective sweep of car's interior not permitted. State v. Robinson, __ N.J. Super. __ (App. Div. 2015) A-5600-12T3

The court reverses an order denying defendant's motion to suppress the handgun seized in a "protective sweep" of his car. Following a routine late-night traffic stop on the Garden State Parkway, police dispatch advised the patrol officer that defendant driver and one of his three passengers had open warrants and were known to carry weapons. Deciding to proceed "tactically," five officers approached with guns drawn and ordered all occupants out of the car. The two men with warrants were arrested and placed in patrol cars. Neither of the two remaining passengers possessed a driver's license. Because there are no facts in the record to support a reasonable suspicion on the part of the officer that the unlicensed drivers were dangerous and could return to the car to obtain immediate access to a weapon, the court deems the search unreasonable.

19. No good faith exception to improper arrest. State v. Shannon, 222 N.J. 576 (2015)

The judgment of the Appellate Division is affirmed by an equally divided Court. The arresting officer's good faith belief that a

valid warrant for defendant's arrest was outstanding cannot render an arrest made in the absence of a valid warrant or probable cause constitutionally compliant.

20. OPRA can require town and police to provide video of security camera. Gilleran v. Twp. of Bloomfield, 440 N.J. Super. 490 (App.Div. 2015)

The Open Public Records Act (OPRA) does not include a blanket exemption for video recordings made from an outdoor security camera. To justify denying an OPRA request pursuant to the definitional exclusions contained in N.J.S.A. 47:1A-1.1 for "security information," "procedures," "measures," and "techniques," the government agency must make a specific showing of why disclosure would jeopardize the security of the facility or put the safety of persons or property at risk.

Because we agree with the trial court that the township did not make a sufficiently specific showing for an exemption, we need not decide whether N.J.S.A. 47:1A-5(g) requires a government agency to review requested recordings and redact only actual confidential information, as argued by plaintiff and the ACLU. Such a requirement of review and redaction seems impractical and virtually impossible to implement when the request is for lengthy surveillance recordings, such as the fourteen hours of recordings requested here by plaintiff.

Kenneth Vercammen is an Edison, NJ trial attorney and has lectured on both Municipal Court/ DWI and Estate/ Probate Law issues for the NJICLE- New Jersey State Bar Association, American Bar Association, and Middlesex County Bar Association. His articles have been published by NJ Law Journal, ABA Law Practice Management Magazine, YLD Dictum, GP Gazette, New Jersey Lawyer magazine and The Middlesex Advocate.

YOUTH EMPOWERMENT SERVICES

First Annual Spring Fundraiser



Wednesday, April 27, 2016
6 pm - 9 pm
Rutgers Club

Individual Ticket: \$50
Corporate and individual
sponsorship packages are
available from \$250 to \$5,000

Join us for a cocktail reception and silent auction to
support the life-changing work of YES

To purchase tickets or for more information, please
contact Isabel Chou at YESFundDevelopment@gmail.com

OFFICE SPACE AVAILABLE

Monmouth County: Ocean Township

Office space approx: 12'6" x 19'

Single office in 4000 sq. ft. suite is opening up soon. Attractive modern spacious office with use of reception room, conference room, kitchen, etc.

Group of 6 lawyers with support staff. Limited receptionist service available. Great for solos or for a firm to set up a satellite office. Near GSP and main highways. Come join the group and develop new working relationships.

If interested, stop by. Rent and costs can be discussed. Please contact:

Adam Jon Weisberg
Counsellor at Law
1500 Allaire Avenue
Suite 101

Ocean Township, N.J. 07712
Ph (732)517-1199
Fax (732)517-1166
ajwlegal@aol.com

Nobody does it better!

Voted

BEST PROCESS SERVER

in New York, Pennsylvania,
Connecticut and
New Jersey!

GUARANTEED

Subpoena Service Inc.

**“If we don’t serve it, you don’t pay!”®
Anywhere in the U.S.A.**

Why would you use anyone else?

**1-800-672-1952
or 732.704.9930**



(FAX) 800.236.2092 - info@served.com - www.served.com



87 Bayard Street
New Brunswick, NJ 08901

INVESTIGATIONS



**Spartan Detective
Agency, Inc.**

Established 1965

WE DO IT ALL

**WHATEVER YOUR
INVESTIGATIVE NEEDS ARE**

877-SDA-2009

**Ph 877.732.2009 Fax 888.224.4405
email:info@SPARTANPI.com LIC # 2392**



**BEST OF
Law Journal
2012, 2013 & 2014**