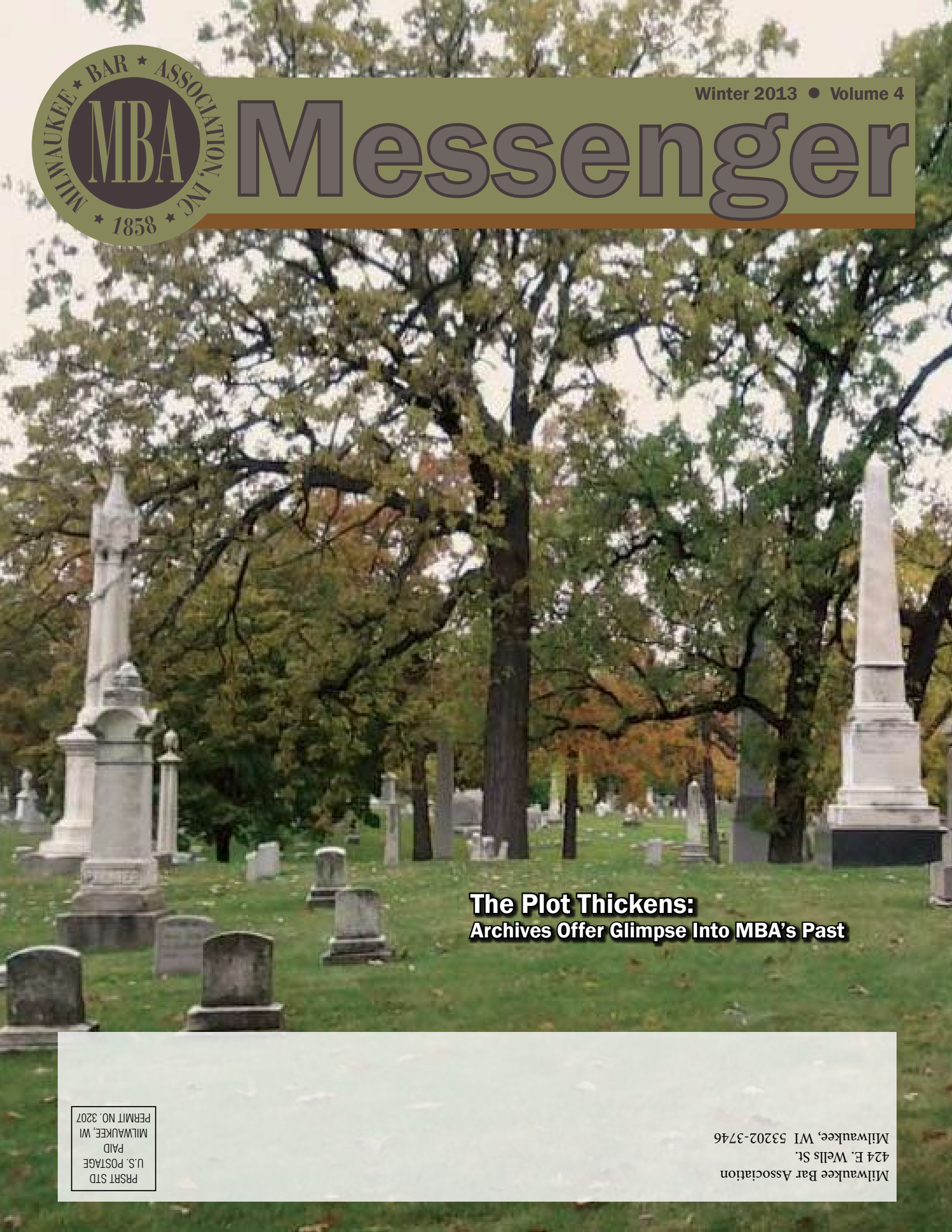




Winter 2013 • Volume 4

Messenger



The Plot Thickens: Archives Offer Glimpse Into MBA's Past

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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
- 11 The Reel Law
- 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.



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Contents

Winter 2013 • Volume 4

In This Issue:

- 8 Bidding on Competitors' Law Firm Names in Google Advertising: Too Aggressive? *Attorney Ken Matejka, LegalPPC*
- 9 Community Justice Council Takes Broad Approach to Improving Criminal Justice System *Attorney Thomas H. Reed, State Public Defender, Milwaukee Criminal Trial Office, and Beth Perrigo, Deputy Court Administrator, Milwaukee County Circuit Court*
- 10 Annals of Election Night Reporting *Attorney Douglas H. Frazer, DeWitt Ross & Stevens*
- 12 Milwaukee Justice Center Mobile Legal Clinic
- 13 Evening at the Courthouse
- 14 MBA Fetes 2013 *Pro Bono Publico* Award Winners at State of the Court Luncheon
- 15 Wells, That's the Way It Goes: MBA's Burial Plot Yields Its Secrets *James Temmer, Executive Director, Milwaukee Bar Association*
- 16 Inherited IRAs in Wisconsin Not Protected by Federal Bankruptcy Laws From Creditors *Attorney Ann Ustad Smith, Michael Best & Friedrich*
- 16 In Memory of Bob Friebert — a Tireless Advocate *Attorneys Shannon A. Allen and Matthew W. O'Neill, Fox, O'Neill & Shannon*
- 17 *MBA Gavel* Was Worthy Predecessor of *Messenger*
- 18 Lincoln's Gettysburg Address in Perspective *Robert H. Skilton*
- 21 MBA Law and Technology Conference Returns December 5

MBA Officers, Board of Directors, and Staff

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Letter From the Editor



Charles Barr, Editor

You'd expect the nation's fifth oldest bar association to have a keen sense of legal history. So if you're a legal history buff, you're in luck. This edition of the *Messenger* is absolutely full of it—legal history, that is.

This year marks the sesquicentennial anniversary of Lincoln's Gettysburg Address. The *Messenger* is proud to celebrate that milestone by presenting a previously unpublished article by the late Robert H. Skilton, "Lincoln's Gettysburg Address in Perspective," which he completed shortly before his death. The author was a distinguished professor of law at the University of Wisconsin Law School for almost three decades, and had a special interest in Lincoln. Professor Skilton's article, brought to us by his son, Madison attorney John Skilton, is an in-depth study, phrase by phrase, of the philosophical and political underpinnings of the immortal words Lincoln spoke on the Pennsylvania battlefield. We are publishing this scholarly work in two installments, with the second installment to follow in our spring edition.

Not to be outdone, our own executive director, Jim Temmer, travels even further back in time to unearth some startling local legal history. He recently discovered what is undoubtedly the most obscure of the MBA's member benefits: a burial plot in Forest Home Cemetery for members who die in penury. Jim's investigation plumbs the lives of several MBA members who were interred there as far back as the 1850s. His quest leads him to the sad and curious tale of Milwaukee's second mayor, a highly revered trial lawyer and veteran politician in Wisconsin's pre-statehood days, who fell so far from grace that he came to rest, completely forgotten, in the MBA's burial plot.

The *Messenger*, inspired by these fearless treks into the past, examines its own history by dusting off an issue of the *MBA Gavel* published in 1946 and recently discovered in the MBA's archives. Its pages introduce us to some interesting facts about the MBA and a few mildly amusing mysteries about life in the post-war Milwaukee legal community.

Our inveterate film critic, Fran Deisinger, gets into the historical spirit with his review of *Amistad* in "The Reel Law." This Steven Spielberg film tells the stirring story of an 1839 African slave revolt aboard a Spanish ship, the tangle of U.S. legal proceedings that ensued,

and the specter of the Civil War that in turn resulted from resolution of those proceedings.

Of course, we can't dwell totally in the past. We assess the advertising gambit of bidding on a competitor's law firm name as an Internet search term. The "hard law" article from our friends at Michael Best examines the developing issue of whether an inherited IRA account can be protected from creditors. MBA Board member Tom Reed reports on the ground breaking work of the Milwaukee County Community Justice Council. We remember the late Bob Frieber, one of the most energetic, creative, and politically savvy lawyers to grace our courtrooms in recent times. Regular contributor Doug Frazer reflects on the emotional tumult produced by an election-night reporting mix-up.

We hope you enjoy this edition of the *Messenger*, and from all two of us in our cacophonous pressroom, here's to a joyous holiday season and a healthy, prosperous New Year. We'd like to express our gratitude to those who have contributed their talents to our humble publication throughout the year, and warmly invite the rest of our readers to join the fun in 2014.

—C.B.

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.

ATTORNEY'S OATH

I do solemnly swear:
 I will support the Constitution of the United States and the Constitution of the State of Wisconsin;
 I will maintain the respect due to courts of justice and judicial officers;
 I will not counsel or maintain any suit or proceeding which shall appear to me to be unjust, or any defense except such as I believe to be honestly debatable under the law of the land;
 I will employ, for the purpose of maintaining the causes confided to me, such means only as are consistent with truth and honor, and will never seek to mislead the judge or jury by any artifice or false statement of fact or law;
 I will maintain the confidence and preserve inviolate the secrets of my client and will accept no compensation in connection with my client's business except from my client or with my client's knowledge and approval;
 I will abstain from all offensive personality and advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which I am charged;
 I will never reject, from any consideration personal to myself, the cause of the defenseless or oppressed, or delay any person's cause for lucre or malice.
 To help me God.

Volunteer Spotlight



Ted Hertel



Ted Hertel

Ted Hertel has served on the Milwaukee Bar Association's Fee Arbitration Committee continuously since 1980, first as a panel member, and then as a panel chair. He has been chair or co-chair of the committee for two terms, including his current term. The purpose of the Fee Arbitration Committee is to resolve in a fair and equitable manner disputes between attorneys and their clients regarding the payment of fees and expenses.

This is a service to both the attorneys involved and to members of the public. The parties are assured of a prompt, binding, and enforceable decision from the panel.

Ted is semi-retired after more than 41 years of practice. He serves a small group of clients, most of whom are of modest means, at his office in Mequon, and concentrates in the areas of estate planning, probate, and real estate. Ted has been a sole practitioner since 2000, and was previously with the firms of Saichek & Hertel, and Gaines & Saichek. He is a 1972 graduate of the University of Wisconsin Law School.

In the 1970s, Ted served on the Milwaukee Junior Bar Association (now known as the Milwaukee Young Lawyers Association) Community Relations Committee. From 2000 through 2012 he served on the Board of Directors of American Baptist Homes of the Midwest, an organization that owns and operates senior living facilities in six states between Milwaukee and Denver. Ted is currently serving on the national Board of Directors of Mystery Writers of America, and was president of the Midwest Chapter of MWA for two years.

In his spare time, Ted plays the hand bells at his church, writes mystery stories and essays, and is a frequent speaker and panelist at mystery conventions. He has been married for 27 years, and loves to travel and take photos.

Upcoming Events

February 4
Judges Night

June 10
Annual Meeting



Member News



Fox, O'Neill & Shannon announced that **Shannon A. Allen** has joined the firm as a partner in its litigation practice. The firm also announced the addition of **Michael G. Koutnik** as an associate in the corporate practice group.



Shannon A. Allen



Michael G. Koutnik

Quarles & Brady welcomed two new attorneys to its Milwaukee office. **Brandon Krajewski** joined the firm as an associate in the Commercial Litigation Practice Group, and **Rachel Taylor** as an associate in the Corporate Services Practice Group.

Reinhart Boerner Van Deuren announced the addition of shareholder **Steven W. Martin** to its Litigation Practice. He is also a member of the firm's Business Law and Real Estate Practices. The firm also welcomed **Joseph D. Shumow** to its Real Estate Practice.



Steven W. Martin



Joseph D. Shumow



Joseph M. Russell

von Briesen & Roper announced that **Joseph M. Russell** joined the firm as a shareholder in its Litigation and Risk Management Practice Group.

Message From the President



Attorney Beth E. Hanan, Gass Weber Mullins



On October 17, almost 300 hundred local lawyers and judges came to hear Chief Judge Jeffrey Kremers deliver the Tenth Annual State of the Court address. The talk contrasted with several prior State of the Court addresses, when the budget picture was dire, and the need to educate (or remind) civic leaders about the importance, and independence, of the judiciary was critical. Following one of those earlier addresses, then-Chief Judge Kitty Brennan received a standing ovation. Describing the financial and physical resource needs

of our local court system, Judge Brennan's address reminded each listener of the importance of separation of powers, and of our own oaths as lawyers to "maintain the respect due to courts of justice and judicial officers." Her address essentially was a call to action for local lawyers to contact their state and county representatives and explain how detrimental the proposed deep cuts to court funding would be to the administration of justice, and ultimately to day-to-day life in our community. Happily, this year's presentation by Chief Judge Kremers described a cost-to-continue budget that should allow our courts to administer justice in the manner we've come to expect and also provide some needed database improvements. It is a credit to the chief judge and his guests at the luncheon—County Executive Chris Abele and County Board Chairwoman Marina Dimitrijevic—that this year's budget process has gone as smoothly as it has.

That said, the chief judge still relayed an implicit "call to action" for all Milwaukee-area lawyers to consider. Judge Kremers described the obsolescence of the current Children's Court building on Watertown Plank Road in Wauwatosa. Not only has the physical structure aged, but also its location is far from ideal. Many families with business in juvenile court live far from that building. Sometimes they must take two buses and still walk a fair distance. Those travel constraints are exacerbated when parents must bring along younger children or in bad weather. But parental involvement in the cases of juveniles involved in the justice system is critically important to successful outcomes. Thus, the chief judge alerted that a new building is needed and a more centralized location is highly preferable. In times of tight local budgets and drastically reduced federal funding, this means that you and I should be talking to our neighbors (the taxpayers) and our elected representatives (the decision-makers) to advance this civic priority.

The other alert issued by the chief judge was similar: the Safety Building is even older than the Children's Court building, its technological capacity is extremely limited, and it should be replaced. This is another multi-million dollar project that will have to be on the civic agenda. Please take the time to keep yourself informed on state and local budget issues, so you can be ready to advocate for the "respect due to courts of justice" by providing a safe, efficient, and workable building for our judicial officers, our safety officers, and all the members of our community who encounter the justice system. Consider joining the MBA Courts Committee to receive some of this information on a monthly basis. And membership renewal season is right around the corner: why not invite several colleagues to join the

MBA, so they too can become informed (and likewise receive all the other ongoing benefits of membership)?

Earlier this year I was in Ottawa, Ontario to learn about the Canadian judicial system and especially its appellate process. Presenters explained that Canadian lawyers are "called to the bar" as they begin their careers. That phrase seems to invoke the nobler aspects of our profession, conveying a sense of service and duty, a charge to look far beyond our own personal interests. Those selfless aspirations certainly are incorporated in the Attorney's Oath we take when sworn in as members of the Wisconsin bar and the opportunities for service manifest in different ways over the course of our careers. Having heard a number of inspiring addresses at the State of the Court Luncheon, I now come to regard that event as the official start of another professional year. And like any New Year's celebration, it is a time to recommit and rededicate ourselves to the full and best aims of our profession. If you agree, perhaps start your New Year by re-reading the Attorney's Oath (reprinted in this issue on page 5) or the Preamble to SCR 20, A Lawyer's Responsibilities. As the Preamble explains, a lawyer is "a public citizen having special responsibilities for the quality of justice." Resolve to feel the burn of those special responsibilities. Use your MBA resources to get there.

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CLE Calendar

Winter 2013

December 4, 2013

Elder Law Section

Use of Service Contracts in Medicaid Planning

Discussion will include law and policy regarding effective use of service contracts and personal care agreements for elderly and disabled clients and their families; best practices for lawyers to ensure that their clients will not be disqualified for public benefits due to the employment of family members; suggested language for agreements; and potential income tax and workers' compensation implications.

Presenter: Heather Poster, Becker, Hickey & Poster

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 10, 2013

Family Law Section

Tax Implications of 2013 Versus 2014 Divorce Date

At the end of the calendar year, many decisions have to be made, and even the date chosen as the final divorce date impacts the parties financially. Review real examples to show tax savings and analysis when deciding on the date, to determine whether to sign a marital property or opt-out agreement, and to make decisions with tax implications.

Presenter: Grant Zielinski

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 11, 2013

MBA Presents

ABA Proposes Changes to Model Rules of Professional Conduct

The ABA's Ethics 20/20 Committee has made a number of proposals for changes to the Model Rules of Professional Conduct. We will have a look at the changes and discuss their impact on our practices.

Presenter: Richard Cayo, Halling & Cayo

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE ethics credit

December 12, 2013

Civil Litigation Section

Effective Preparation and Presentation in Civil Court Hearings

Presenters: Honorable Jean DiMotto;

Honorable Jane Carroll

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 16, 2013

Real Property Section

The Ins and Outs of Estoppel Letters and SNDAs

In-depth discussion of the estoppel letter and subordination, non-disturbance, and attornment agreements—always parts of a lease, too often neglected.

Presenter: Ann Wal, von Briesen & Roper

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 17, 2013

Estate & Trust Section

Planned Giving: Charitable Gifts of Real Estate and Charitable Gift Annuities

This presentation will cover two different types of charitable gifts—real estate and charitable gift annuities. Gifts of real estate provide donors many opportunities but also involve pitfalls for charities to avoid. The charitable gift annuity is a philanthropic technique that is particularly attractive in a low interest rate environment, but unfortunately many donors and their advisors are unaware of gift annuities and how they can help achieve charitable goals.

Presenter: Jim Krogmeier, Director of Development, Planned Giving, Marquette University

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

December 18, 2013

Labor & Employment Section

Technology's Threat to Confidentiality, Attorney-Client Privilege, Marketing, and Researching Jurors

Discussion of some of the major challenges presented by technology and some solutions to these challenges, including the challenges that technology presents to preserving the attorney-client privilege, maintaining confidentiality, and ethical marketing

Presenter: Aviva Meridian Kaiser, Assistant Ethics Counsel, State Bar of WI

8:30 – 9:00 a.m. (Continental Breakfast/Registration)

9:00 – Noon (Presentation)

3.0 CLE ethics credits

December 19, 2013

Taxation Section

IRS Circular 230 Update and Selected Ethical Issues in Federal Tax Audits

This will provide a timely and in-depth discussion of selected (and recurring) ethical issues in tax planning and IRS tax audits. Circular 230 is the subject of some significant (and often helpful) changes, and those changes will also be addressed.

Presenters: Robert Dallman, Whyte Hirschboeck & Dudek; Robert L. Gordon, Michael Best & Friedrich

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE ethics credit

January 9, 2014

Civil Litigation Section

Drafting Enforceable Non-Compete Agreements in Wisconsin and Elsewhere

Presenter: Nicole J. Druckrey, Quarles & Brady

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit

February 17, 2014

Real Property Section

Tax Assessment Challenges

Presenter: Eric Bolander, Godfrey & Kahn

Noon – 12:30 (Lunch/Registration)

12:30 – 1:30 (Presentation)

1.0 CLE credit



Judges Night

2014

Join members of the judiciary for an elegant evening. Enjoy fine company, an array of appetizers and desserts, and the music of the Jeff Hamann Jazz Duo. Cash bar available.

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Megan Barbara, *Gamino Law Offices*

Matthew Bauer, *Urban & Taylor*

Ed Bremberger

Walter Brummund

Mattie Clay, *Foley & Lardner*

Shane Delsman, *Godfrey & Kahn*

Scott Drummond

Ricardo Estrada, *Sperling Law Offices*

Jonathan Ficke, *Heuer Law Offices*

Brittany Finlayson, *von Briesen & Roper*

William Fischer, *Davis & Kuelthau*

Jacob Fritz, *Quarles & Brady*

Patrick Greeley, *von Briesen & Roper*

Bradley Grell, *Sperling Law Offices*

Gregory Heinen, *Foley & Lardner*

Douglas Huenink, *Deloitte Tax*

Jeff Hughes, *Sterling Law Offices*

Michael Koutnik, *Fox, O'Neill & Shannon*

Nicole Kowalski, *Habush Habush & Rottier*

Nicholas Krienke, *Assurant Health*

Krista LaFave Rosolino, *Milwaukee County
Circuit Court*

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Katie Lonze, *First, Albrecht & Blondis*

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Bidding on Competitors' Law Firm Names in Google Advertising: Too Aggressive?

Attorney Ken Matejka, *LegalPPC*

When a law firm advertises in Google, the goal is to get as much local traffic to its website as possible that relates to its practice areas. To do this, the law firm casts the widest possible net by bidding on every conceivable, pertinent, law-related search phrase. In certain areas of law, such as personal injury, the number of phrases bid in a well-built campaign can exceed 2,000.

Among the more aggressive advertisers, it is commonplace to bid on the names of other local law firms in the same practice areas. For example, if you practice in the same area of law as the Johnson & Smith law firm, you can bid on the phrase "Johnson & Smith." Then, anytime someone searches for that law firm by name, he or she sees the advertiser's ad and may click on it. If the searcher clicks on your ad and it compares favorably to Johnson & Smith, it becomes a lead to the advertiser's law firm that may have otherwise gone to the other firm.

While this has not been an uncommon practice, legal and ethical issues about this type of advertising have lately come to the fore.

State Bar Ethics Opinions

At least one state bar has issued an opinion about the practice of bidding on a competitor's name. The North Carolina State Bar, in 2010 Formal Ethics Opinion 14, found that it was a violation of the Rules of Professional Conduct for a lawyer to bid on another lawyer's name in Internet search engine advertising.

No similar Wisconsin opinion has been found. The State Bar of Wisconsin has not officially reacted to the recent *Habush v. Cannon*¹ opinion (more on this case below) or taken a position on the practice of bidding on competitors' trademarks generally. Whether Wisconsin will ultimately follow North Carolina on this issue is difficult to predict, but both are Model Rule states.

Case Law

Some law firms, when they become aware that other firms are bidding on their firm names, have been filing lawsuits claiming unfair competition, trademark infringement, and false advertising.

In *Habush v. Cannon*, the plaintiffs argued that Cannon & Dunphy, the advertisers, were in breach of Wisconsin's privacy law. While the plaintiffs in the *Habush* case did not prevail,

the appellate court opinion did not examine the action under claims of unfair competition, trademark infringement, or false advertising. The narrow *Habush* opinion is therefore of limited analytical value.

In a case reported in the *ABA Journal* in October 2013, a Florida personal injury law firm sued a competing law firm in federal court, arguing unfair competition, trademark infringement, and violations of the Anti-Cybersquatting Consumer Protection Act.² If the case is finally resolved in favor of the plaintiffs, it will have an impact on whether any advertiser in the Eleventh Circuit dares to continue bidding on other law firms' names.³

Why Not to Do It

In the United States, Google has no restrictions on the practice of bidding on competitors' trademarks, and advertisers are apparently free to do it in states that have not prohibited it yet. For the following reasons, however, the risks of this type of advertising outweigh the potential return.

First, if very few people are searching for the competitor's law firm, it is possible that Google will seldom run the advertiser's ad due to its "low search volume." If Google only runs the ad once in awhile, and if only 2% or 3% of Google users click on the ad, the advertiser probably will not get any significant traffic from it (except perhaps from the competing law firm itself to get the address of the advertiser's website for its cease-and-desist letter).

Second, due to recent improvements in Google's search algorithm, it is possible that Google will display one of the advertiser's ads on a search for one of its competitors based on Google's best guess at the user's search intent, without the need for the advertiser to bid on the competitor's name. For example, if Google has a sense that the user is looking for a lawyer based on, among other things, previous searches in the user's search session, it may deliver the advertiser's ad on a subsequent search for the competitor's law firm.

Third, the advertiser will invite an angry cease-and-desist letter, which could needlessly cost the advertiser a lot of time, headaches, and attorneys' fees.

continued page 22

Community Justice Council Takes Broad Approach to Improving Criminal Justice System

Attorney Thomas H. Reed, State Public Defender, Milwaukee Criminal Trial Office, and Beth Perrigo, Deputy Court Administrator, Milwaukee County Circuit Court

The Milwaukee County Community Justice Council mission statement includes the following: "Through strategic planning and research the Council will identify, evaluate, and develop strategies to improve the justice system to enhance public safety and the quality of life in Milwaukee County." This language emphasizes a broader mission than a traditional focus on courts or policing alone. One of the best expressions of this focus on community needs has been the broad array of topics featured at the council's bi-monthly meetings.

These meetings are open to the public and include the 27 member agencies. The meetings are held at the Clinton Rose Center, 3045 North Dr. Martin Luther King Drive, 9:00 - 10:30 a.m. on the fourth Wednesday of January, March, May, July, September, and November. The next meeting is set for November 27, 2013. These meetings have been well attended.

The Community Justice Council's Public Outreach & Education Committee has worked hard to identify important topics and speakers for each meeting and to encourage attendance. The meetings have featured the topics listed below and offer a unique opportunity to discuss key issues affecting our justice system with members of the Executive Committee and key stakeholders.

Recent topics have included:

"Mental Illness and Criminal Justice: an Update on EBDM and CIT Planning," which was designed to inform how the criminal justice system has become the repository for individuals with chronic mental health problems, and what is currently being done to provide a broader context for understanding the scope of this issue in the community.

"An Engaged Community Meets the Justice System," which highlighted

how the Sherman Park neighborhood began a conversation with the justice system that has been mutually beneficial.

"The Business of Community: How Investing in Justice Leads to Investment in Milwaukee," which focused on initiatives to improve public safety by focusing on community development. Speakers included Barbara Miner, an award-winning journalist, who discussed her newly-released book *Lessons from the Heartland: a Turbulent Half-Century of Public Education in an Iconic American City*; Matt Melendes, Director of Washington Park Partners Sustainable Communities; and Leo J. Ries, Executive Director of Local Initiatives Support Corporation (LISC) Milwaukee, part of the largest community development organization in the country.

"Using Evidence-Based Methods in Job-Re-entry Services: What Works to Reduce Recidivism and Increase Employment for Criminal Justice System-Involved Individuals," which focused on worker readiness for former offenders and the importance of evidence-based decision-making in designing workforce development strategies. Presenters were Angie Turner, Center for Self Sufficiency, who highlighted takeaways from the First Annual Employer Summit of the Milwaukee Re-entry Network; Clarence Johnson, Wisconsin Community Services, who discussed integrating re-entry services into workforce development efforts; and Janice Stricker, U.S. Probation and Pretrial Services System, with insights about the impact of evidence-based corrections on prison re-entry programs.

If you are interested in having a speaker from the MCCJC at your event, or wish to suggest topics for future meetings, please contact MCCJC coordinator Nate Holton at 414-276-8240 ext. 6, or nholton@publicpolicyforum.org.

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Annals of Election Night Reporting

Attorney Douglas H. Frazer, DeWitt Ross & Stevens



Douglas H. Frazer

Election Day. Tuesday, April 2, 2013. I was running as an incumbent for a second term as Fox Point Village Trustee. Three candidates were running for two seats.

The village has two reporting units (polling stations): the Longacre Pavilion and the police station. A source, serving as a late-shift poll worker at the pavilion, texted me the results from his unit: “Wards 5,6,7,8,9. Eric [Fonstad] 350, You 424, Terry [McGauran] 228. Congratulations!”

By 10:10 p.m., *Journal Sentinel* Online had not reported the village-wide results. I went to bed.

At 1:00 I went to the computer. I had lost by four votes. JSONline had the checkmarks next to the other two candidates: Fonstad 650, McGauran 454, Frazer 450. My campaign strategy had failed. Worse, I probably had all sorts of friends, acquaintances, and other supporters, who did not vote.

In connection with an office this low, however, there is not too far to fall. I figured I'd be over it by lunch.

In bed, I speculated that my source, maybe a bit excited, misplaced a digit when sending me the text. I got up at 4:30. I drove around and picked up my yard signs. It was crisp and pleasant predawn; plus, nothing worse than having to look at a yard sign of a loser. I got home at 6:00 and went back to bed.

At 8:10, I started off for work. I noticed I had a voice mail message from one of the other Village Board members. The message had come in at 8:05. “Congratulations, I think.” The *Fox Point Patch* was reporting me a winner; however, JSONline and Fox News 6 Online were reporting me the loser. My colleague was wondering whether the latter two had the totals correct.

I noticed an e-mail from a friend. It said, “Congrats on the re-election Mr. Frazer! The spontaneous victory party was out of control last night ... over 600 people showed!”

Now I was confused. It was 8:15. I called village hall and asked to speak to the village clerk. She was away. I said I would hold. The clerk got on the phone. Did I win or did I lose? I can't certify the results until Friday, she replied. WTF, I thought. She either thinks she is an adverse witness or that speaking in

riddles at this hour of the morning is somehow charming. Let me rephrase the question, I said. What were the *unofficial* results? This seemed to put her at ease. I can tell you that you were the leading vote-getter at each reporting unit. What were the totals? You got 875 votes, Fonstad 650, McGauran 454.

That's interesting. That is not what JSONline and Fox News 6 Online are reporting. Each is reporting that I lost by four votes. The clerk knew nothing about this. She said she would look into it right away.

What the clerk was thinking, she later confided, was whether she was the next Kathy Nicholas. Nicholas was the Waukesha County clerk who eventually lost her job when, two days after the heated Prosser-Koppenburg election in 2011, she reported 14,315 untallied City of Brookfield votes. The discovery reversed the election's outcome.

I checked the *Fox Point Patch*. Sure enough, the *Patch* had reported the clerk's numbers.

I circled back home. I had e-mailed my family at 7:35, “Lost race narrowly. Leaves me wondering how many of my supporters did not make it to the polls. Never a dull moment. On to next challenge.”

At 8:31, I e-mailed them again. “Premature concession. Turns out I won. JSONline and Fox News 6 Online had my totals from only one out of the two polling places. *Fox Point Patch* reported it correctly. Confirmed all this with Village Clerk. I had woken up Karen [my wife] at 1 a.m. to report my defeat. Down goes Frazer. Now I am going to work. Hope the rest of the day is less dramatic.”

At 9:00, the village clerk sent the following e-mail to members of the media: “The unofficial election results for the Village of Fox Point Trustee race are being incorrectly reported in news media outlets. Please do whatever you can to correct this mistake. The correct official totals, which are the same numbers that were distributed last night in the attached document, are as follows: Eric Fonstad 650, Douglas H. Frazer 875, Terry McGauran 454. Please feel free to contact me with any questions.”

At 10:59, the village clerk sent the following e-mail to village officials: “I wanted to let you know that the media has been incorrectly reporting the results from yesterday's Village Trustee election. Please see e-mail below. The Milwaukee County Election Committee, the

Government Accountability Board, the media, and the candidates have all been notified of the error that has been made by the media. Please let me know if you have any questions.”

Arriving at work, many of my colleagues consoled me for losing the race. Two days later, friends and acquaintances still thought I had lost.

The challenger was Terry McGauran. A good man. A solid guy. While I was tossing and turning in bed, McGauran spent the better part of the night and morning wondering whether he was the greatest village candidate ever. He put his name on the ballot, campaigned sparingly, and knocked off an incumbent.

Later, the village clerk suggested that perhaps the cause of the error was the League of Women Voters. That seemed odd. I put the matter aside. Until now.

The process by which the *Journal Sentinel* and other media outlets report election-night results in Milwaukee County is not well understood. It involves a sketchy vote-gathering consortium called the Wisconsin Election Service (not a Wisconsin registered entity/no website/no listed telephone number). A handful of media outlets, including the *Milwaukee Journal Sentinel* and Fox News 6, subscribe to this service. The League of Women Voters of Milwaukee County, in turn, contracts with the Wisconsin Election Service on a fee-for-service basis to provide unofficial results from various municipalities shortly after the polls close. The League sends representatives (League members) to the various reporting units. Each representative phones in results to the Wisconsin Election Service a short time after the vote totals come off the tape.

What appears to have happened is this: the League representative reported the totals for my competitors correctly, but for candidate Frazer did not add together the results from each of the village's two polling units.¹ The Wisconsin Election Service, in turn, reported for candidate Frazer the exact votes from one, but not both, of the two reporting units. With those numbers, candidate Frazer lost by four votes to the number two vote-getter. JS Online and Fox News 6, relying on the Wisconsin Election Service numbers, put check marks next to the two other candidates and daisy-chained the error to the world.

A few media outlets got it right. The village clerk will include in her election-night e-mail

continued page 22



Amistad

Directed by Steven Spielberg
1997; 155 min.

Steven Spielberg's most recent film was about our most revered lawyer, Abraham Lincoln, but an earlier film was his only true "lawyer" movie. *Amistad* tells the story, somewhat loosely but not entirely unfaithfully, of a group of Africans who in 1839 were abducted in Sierra Leone, survived the middle passage to Cuba on a Portuguese slaver ship, and then after being sold and placed on a smaller Spanish ship—*La Amistad*—violently rebelled en route to a sugar plantation, killing the captain and his mate and taking control of the ship and its surviving crew. They demanded that the crew sail them back to Africa, but the navigator deceptively steered the ship north at night. The ship was sighted and seized by a United States revenue cutter off Long Island, and then taken to New Haven, Connecticut, where the Africans were interned. (Surprisingly, Connecticut had not entirely abolished slaveholding at that time.)

There began a complex amalgamation of civil and criminal cases that ended in the United States Supreme Court. Abolitionists sought to have the Africans freed. The sailors from the revenue ship asserted rights of salvage to both the ship and the property aboard—including the Africans. The Spanish Ambassador pressed the claim of the Spanish Crown and the ship's Spanish officers who had survived the rebellion, and claimed ownership of the Africans as slaves. And the local prosecutor charged the Africans with murder of the ship's master.

The lead abolitionists, played by Stellan Skarsgard and Morgan Freeman (both characters may be fictional inventions to simplify and dramatize the story), uneasily choose as the Africans' advocate a young lawyer, Roger Baldwin, who views the case initially as a species of property dispute. Matthew McConaughey is earnest in the role, although he does not entirely tame his Texas accent in playing a 19th century Yankee.

Others in the large cast include Djimon Hounsou as Cinque, the reluctant but determined leader of the Africans; Nigel Davenport as a feckless President Martin Van Buren, who is astonished by his advisors' warnings that this matter of "a few Africans" threatens to rend the union (the *Amistad* matter was in fact a *cause celebre* among both abolitionists and southerners); Anna Paquin as the adolescent Queen Isabella; David Paymer as the Secretary of State working behind the scenes to stack the judicial deck against the Africans; Arliss Howard as Senator John Calhoun, lion of the south; the exceptional Pete Postlethwaite as the prosecutor; and Chiwetel Ejiofor as a British seaman from Sierra Leone who volunteers as an interpreter. The most interesting historical American character in the drama is John Quincy Adams, in his seventies, a decade removed from his presidency, but still a sitting representative in Congress from Massachusetts. He is played marvelously by Anthony Hopkins.

As you might imagine given such a large cast of characters and a story with such a long legal arc, there is a lot going on, and at times the movie stutters trying to arrange it all. But Spielberg isn't Spielberg for nothing, and he orchestrates a rather classical three-act play with many opportunities for his fine cast to shine. The first act is the horrific transit of the Africans, from abduction, through their Atlantic passage and rebellion, and to their eventual capture and internment in the U.S., including a terrifying scene of the Portuguese slavers drowning many of their human cargo when they realize they have not brought

sufficient provisions. This film fell between Spielberg's *Schindler's List* in 1993 and his *Saving Private Ryan* in 1998. The films are not quite a trilogy, but each film is about wrenching historical events, and each has unflinchingly graphic scenes of humans abusing other humans that have scarcely been duplicated in the movies in a *less* exploitative way.

The harrowing journey of the Africans to America establishes the moral premise that drives the rest of the film. In the middle piece of the story, there are scenes of the abolitionists and Baldwin learning to communicate with the Africans so as to advocate for them, and the Africans laboring to understand both what is going on in the courtroom and the strange customs and religion of the people with whom they interact. Did I mention a courtroom? Indeed, in its last two acts *Amistad* is largely a courtroom drama. Here we see some familiar themes. For example, there is the young, inexperienced lawyer Baldwin (although in real life he was not so inexperienced as the film suggests) cleverly battling the prosecutor and earning the begrudging respect of his skeptical clients, the abolitionists and Cinque. The courtroom and trial scenes are arresting; the room has some familiarity to modern eyes with bench, bar, and jury box, but the procedures are less familiar, and overall there is a somewhat cluttered and unstructured feeling to the forum, reminiscent of the mid-19th century courtroom in John Ford's very different *Young Mr. Lincoln*. In a moment of high drama, Cinque begins to understand both what is happening and some rudimentary English, and he stands and pleads with the court, "Give us, us free!"

continued page 20

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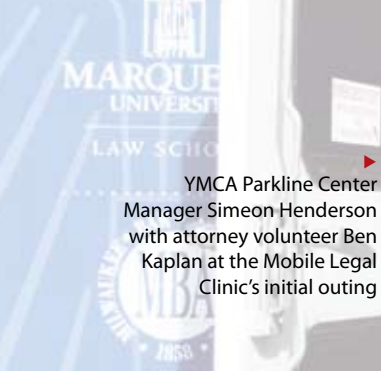
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Mobile LEGAL Clinic



Attorney Mike Gonring and MBA President Beth Hanan enjoy the day.

The new MJC Mobile Legal Clinic vehicle on its maiden voyage!



YMCA Parkline Center Manager Simeon Henderson with attorney volunteer Ben Kaplan at the Mobile Legal Clinic's initial outing



Michael Best and Friedrich attorney volunteers, Ben Kaplan and Valerie Johnston, share insight with MU law student volunteers, Katie Seelow and Julia Westley.



County Supervisor Deanna Alexander shares her excitement about the Mobile Legal Clinic with MJC Executive Director Dawn Caldart and Michael Best & Friedrich attorney volunteers Ed Sarskas, Ben Kaplan, and Valerie Johnston.



Attorney Supervisor Mary Ferwerda talks with Fox 6 News about the Mobile Legal Clinic.



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Evening at the Courthouse



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delivers a welcome
from the Court while
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Baish looks on.



▶
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Stawski speaks with
associate federal
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and Craig Albee.



Judge Randa and Judge Pepper talk to event attendees. ▲

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OUR LAWYERS SET THE BAR

MBA Fetes 2013 *Pro Bono Publico* Award Winners at State of the Court Luncheon

The Milwaukee Bar Association presented its annual *Pro Bono Publico* Awards at the Tenth Annual State of the Court Luncheon on October 17. Three awards were presented: one to a law student, one to an organization, and one to an individual attorney. Here are introductions to the winners and the impact their work is making on the community.

Bryant Park, student *Pro Bono Publico* Award winner



Bryant Park, a 3L at Marquette University Law School, accepts the MBA's law student *Pro Bono Publico* Award.

Bryant Park is a third-year student at Marquette University Law School. His service work literally started from day one: he logged *pro bono* hours during his very first weeks as a law student and has continued ever since. He has shared his time with a number of endeavors, primarily the Marquette Volunteer Legal Clinic. Clients of the MVLC at the House of Peace, Hillview, and Milwaukee Justice

Center locations have benefitted from his assistance. In 2013, the MVLC began offering services focused on the Hmong population. Bryant, together with attorney Kahoua Yang of Hawks & Quindel, has been largely responsible for launching and staffing this project.

After volunteering during his first year, Bryant applied for and was chosen to be a member of the MVLC Student Advisory Board, a two-year commitment that entails not only helping to staff clinic sites, but also participating in recruitment, training, planning, and other duties. Other examples of Bryant's *pro bono* work include his involvement with Project Homeless Connect, a one-day resource event for Milwaukee's homeless population; and his travels to the Immigrant Detention Center in Kenosha as part of the law school's know-your-rights trips.

Students at Marquette University Law School can earn honors for their *pro bono* service, with two levels of recognition: at 50 hours and 120 hours served. Even though Bryant has most of his third year remaining, he has already exceeded the hours needed to reach the highest level of distinction, having served over 130 hours.

Eastern District of Wisconsin Bar Association's *Pro Bono* Committee, organization *Pro Bono Publico* Award winner



Kelly Mangan and Rock Pledl accept the MBA's organization *Pro Bono Publico* Award on behalf of the Eastern District of Wisconsin Bar Association's *Pro Bono* Committee.

In January of 2013, the *Pro Bono* Committee of the Eastern District Bar Association of Wisconsin launched its *Pro Se* Help Line. This innovative program matches *pro se* civil litigants with experienced federal court practitioners for limited-purpose representation directed at helping those litigants navigate often complex and hard-to-understand federal court rules and procedures. This is a first-of-its-kind effort in the federal courts in Milwaukee. The judges, law

clerks, and clerk of court in the Eastern District of Wisconsin have long expressed a need for assistance in answering procedural inquiries from *pro se* civil litigants. Such matters are frequently addressed to chambers or the clerk of court's office, neither of which can respond. With guidance from the State Bar, the Eastern District Bar Association's

Pro Bono Committee developed the *Pro Se* Help Line to answer these questions, guide litigants, make their access to justice more meaningful, and enable the civil justice system to proceed more efficiently and effectively.

The Eastern District Bar Association's *Pro Bono* Committee solicited volunteers from its members, trained them in providing limited-service representation, and reached out to *pro se* litigants to offer assistance through the Help Line. Brochures explaining the program are now available at the clerk's offices in Milwaukee and Green Bay, the court library, online at the bar association's website, and at various Marquette Volunteer Legal Clinic sites. In the short life of this program, some 15 Eastern District of Wisconsin Bar Association volunteers have served more than 25 *pro se* litigants trying to secure justice in our federal courts. As the program grows, the bar association is looking for more volunteers to help improve the quality of justice in the Eastern District of Wisconsin.

Thomas L. Shriner, Jr., Foley & Lardner, individual lawyer *Pro Bono Publico* Award winner

Tom Shriner is recognized as one of Wisconsin's leading business, commercial, and bankruptcy litigators. In addition to his busy practice, during the past three decades Tom has either personally accepted or supervised numerous younger Foley attorneys in more than 60 *pro bono* criminal cases heard by the Seventh Circuit. Tom annually spends several hundred hours on such matters. The Seventh Circuit annually assigns Foley & Lardner appeals covering its three-state jurisdiction. In each instance, Tom is responsible for the arguments prepared and the presentations made.

Tom is held in high judicial regard for his *pro bono* work and his skill as an appellate lawyer. When the Seventh Circuit decided in 2011 to grant *en banc* review of the dismissal of a *pro se* plaintiff's complaint in order to focus on the appropriate standards for class-of-one equal protection claims against law enforcement personnel, the court specifically requested that Tom represent the plaintiff.

Although his Seventh Circuit work is the centerpiece of Tom's *pro bono* practice, he has also undertaken significant other *pro bono* and public interest representation throughout his career. For example, he successfully defended the state's trial judges in an action which sought to eliminate at-large, countywide election of Milwaukee County circuit court judges. More recently, Tom obtained a favorable verdict in a matter alleging that it would violate anti-discrimination laws for a Milwaukee County municipality to raze a housing project in which many minorities and disabled persons lived as residents.

Beyond the courtroom, Tom is a member of the Wisconsin Judicial Council and serves as chair of its Evidence and Civil Procedure Committee. Tom is an adjunct professor of law at Marquette University Law School, where he has co-taught with the dean courses in advanced civil procedure and federal courts, as well as a Supreme Court seminar. He also dedicates a portion of his time to educational leadership as a member of the Board of Trustees of Cardinal Stritch University and the Board of Curators of the Wisconsin Historical Society.



Milwaukee County Circuit Court Judge Maxine White presents the MBA's individual lawyer *Pro Bono Publico* Award to Thomas L. Shriner, Jr. of Foley & Lardner.

Wells, That's the Way It Goes: MBA's Burial Plot Yields Its Secrets

James Temmer, Executive Director, Milwaukee Bar Association



Tempus Fugit Memento Mori. Time flies, remember death. This thought entered my mind as I attempted to locate Lot 2, Block 11, Section 27 in the Forest Home Cemetery on a dreary late October day. Believe it or not, I took this trip as part of my duties as executive director of the Milwaukee Bar Association.

While going through some old files in the office, I discovered

one labeled “Forest Home Cemetery” that piqued my curiosity. The file’s contents revealed that the MBA owned a lot with seven graves. The MBA purchased the lot as the final resting place for seven destitute members who perished during the mid-to-late nineteenth century. Any communal sense of spiritual or professional responsibility for the deceased had dissipated by the 1950s. Minutes of the April 10, 1951 MBA Executive Committee show that it questioned the wisdom of an \$8.00 annual payment for maintenance of the lot.¹ The minutes also contain the names of our interred members and their dates of burial: Alexander W. Stone—September 15, 1854; Horatio N. Wells—August 20, 1858; James M. Warren—August 23, 1859; James Mitchell—December 8, 1865; William E. Webster—November 4, 1868; John M. Binkley—May 19, 1875; and Thomas Hover—May 16, 1879.

The MBA continued to pay for grave maintenance until the 1990s, when the ever-vigilant MBA Board of Directors declined to pay the \$48.00 invoice. An article by William Janz in the *Milwaukee Sentinel* highlighted two informative topics: the awe-inspiring frugality of the MBA; and the fact that one of the indigent lawyers, Horatio N. Wells, was the second mayor of Milwaukee!² The MBA soon remitted \$600.00 to Forest Home Cemetery for the “perpetual care” of the MBA’s lot.

I felt obliged to perform some due diligence and see if our lot was receiving the paid-for perpetual care. My visit to Forest Home Cemetery revealed that only the tombstones of Wells and Thomas Hover remain visible. I began my quest to learn more about Wells and his compatriots. Several of these lawyers had remarkable careers. Thomas Hover was born on a farm in western New York and fought in the Civil War. Hover left the Union Army after three years because he contracted typhoid fever. He later taught school and studied law in Ohio. Hover moved to Milwaukee and went to work for Judge Byron Paine. He then worked as the assistant city attorney to E. G. Ryan.³

William Webster served in the State Assembly from 1853 to 1854. He foreshadowed his own demise with a pledge to the 5th Ward that “if elected, he would never aid the cause of temperance.” A newspaper article later had this to say about Webster: “He was as big a drunkard as ever lived here, and that is saying a good deal [A]fter he became a prominent and successful lawyer, whisky got the better of him.” An article in the newspaper claimed that Webster died “in the gutter, despised by all and mourned by none.”⁴ Apparently, the author was unaware of the largesse of Webster’s MBA colleagues.

Any school kid growing up in Milwaukee learns about Solomon Juneau, Byron Kilbourn, and George Walker. All three were rough-and-tumble businessmen whose disagreements are still visible in the crooked bridges spanning our downtown. All three men also served as mayor

of Milwaukee. Walkers Point, Juneautown, and Kilbourntown figured prominently in the history of our city. What about Horatio Wells? Who was he and why hadn’t I ever heard of him?

Horatio N. Wells was born in Hinesburg, Vermont in 1808. He studied law in Burlington, Vermont and struck out for the frontier town of Milwaukee at the age of 30. Wells began a very successful law career when he opened Milwaukee’s first law office with Hans Crocker. It was reported that during the first ten years of Wells’ practice in Milwaukee, “there was scarcely a case before a jury in which he was not employed on one side or the other.” Additionally, he worked in Racine, Walworth, and Rock County courtrooms. It is easy to see why he had so much jury work. Wells was described as droll and witty. “His large fund of anecdotes, his native kindness, good nature and popular social qualities” were credited with his success more than his “store of legal attainments.” In 1839, Wells was appointed Attorney General of the Wisconsin Territory and stayed in that post for two years. Wells successfully ran for elective offices, including as a member of the lower (1839-1840) and upper (1847-1848) houses of the Wisconsin Territorial Assembly. In 1847, Wells received 974 votes to George H. Walker’s 621, and became Milwaukee’s second mayor. (Take that, Walker’s Point!) He helped write the Wisconsin Constitution and served as a Milwaukee County judge from 1850 to 1854.⁵



If not for Horatio Wells’ political activities, the history of one of Milwaukee’s most prominent law firms could be quite different. The firm of Wells & Crocker needed more legal help because Wells was off doing the peoples’ business. They brought in a new partner, Ashel Finch, to form Wells, Crocker & Finch.⁶ Young Finch spent two years at the firm honing his craft and making important connections. Crocker left to form a new firm in 1841, and Wells did not see eye to eye with Finch. Finch asked his friend’s brother, William Pitt Lynde (Milwaukee’s twelfth mayor), to become an associate with him and Wells. Finch and Lynde eventually formed their own firm that is known today as Foley & Lardner. It might not stretch credulity to imagine a local politician dying destitute, or maybe even a circuit court judge, but a partner from Foley & Lardner? What happened to Horatio N. Wells? Perhaps a good lawyer assistance program could have helped.

Wells died on August 19, 1858, “a wreck of the handsome, vivacious young man who came here with such high hopes.”⁷ His death was attributed to excessive drinking, or as a biographer quaintly expressed it, “his convivial habits carried him rapidly into obscurity.”⁸ Obscurity indeed. Forest Home Cemetery publishes a “Self-Guided Historical Tour,” complete with a map for locating the graves of prominent local individuals. One of the “Special Interest Tours” concerns Milwaukee mayors. Among the 16 dignitaries are Byron Kilbourn, William Pitt Lynde, and Frank Zeidler, but the Honorable Horatio N. Wells is absent from the list! I took the short walk down Wells Street to City Hall and snooped around for more information. In the mayor’s second floor office there is a long “Wall of Mayors” containing portraits of more than 40 men. All of our past mayors are represented in one artistic form or

Inherited IRAs in Wisconsin Not Protected by Federal Bankruptcy Laws From Creditors

Attorney Ann Ustad Smith, Michael Best & Friedrich

A federal court of appeals has determined that money in inherited individual retirement accounts is not protected from creditors by federal exemption laws.

Federal bankruptcy laws permit individuals to claim certain property as exempt from the reach of their creditors. Many types of retirement accounts and benefits are protected by these exemptions. "Inherited" individual retirement accounts (IRAs) hold funds from persons who established IRAs for their own use and died before depleting the funds in those accounts. The Seventh Circuit Court of Appeals has concluded that funds in a non-spousal inherited individual retirement account are not exempt or protected from claims of the heir's creditors. *In re Clark*, 714 F.3d 559 (7th Cir. 2013).

Judge Easterbrook's opinion considers the exemptions under federal bankruptcy law, 11 U.S.C. § 522(b)(3)(C) and (d)(12). Those provisions exempt from creditors' claims any "retirement funds to the extent that

those funds are in a fund or account that is exempt from taxation under sections 401, 403, 408, 408A, 414, 457 or 501(a) of the Internal Revenue Code of 1986." An individual retirement account by which a person provides for his or her own retirement meets this requirement. If a married IRA holder dies, the decedent's spouse inherits the account and the money remains "retirement funds" in the same sense as before the original owner's death: there are limits on when withdrawals may occur without penalty, and requirements to start withdrawals when the account holder (the original account holder or surviving spouse) reaches a certain age.

Otherwise, however, different rules govern inherited IRAs than "traditional" IRAs. While the funds in the inherited IRA account remain sheltered from tax until the money is withdrawn, other attributes of the account change. For example, no new contributions can be made, and the balance cannot be rolled over or merged with another account. Moreover, the funds are not dedicated to the

heir's retirement years. The inherited IRA must begin distributing its assets within a year of the original owner's death, and payout must be completed (with limited exceptions) in as little as five years. According to the court, because the exemptions require that the account be both tax-exempt and retirement funds, and the money in an inherited IRA cannot be held in the account until the heir's retirement, the inherited IRA does not fit the definition of the exemption set out in the Bankruptcy Code.

The Seventh Circuit's decision is in contrast to the opinions in *In re Nessa*, 426 B.R. 312 (BAP 8th Cir. 2010), and *In re Chilton*, 674 F.3d 486 (5th Cir. 2012). The courts in those cases determined that inherited IRAs are exempt under the Bankruptcy Code because: (a) the exemption statutes merely require the funds to be "retirement funds" (as they were for the decedent), not the debtor's retirement funds; and (b) while traditional and inherited IRAs may have different distribution rules, both are tax-exempt under 26 U.S.C. § 408.

Robert H. Friebert (1938-2013)

In Memory of Bob Friebert — a Tireless Advocate

Attorneys Shannon A. Allen and Matthew W. O'Neill, Fox, O'Neill & Shannon

The Milwaukee legal community suffered a great loss when Bob Friebert passed away on September 6, 2013.

Bob was known far and wide for his creative legal mind and tireless pursuit of justice. Those who were lucky enough to work with Bob, as well as those who litigated against him or had him appear in their courtrooms, know first-hand how Bob gave 150% advocating for his clients. He was a treat to watch, both in and outside of the courtroom.

Civil litigators know the profound impact a lawsuit can have on the parties and anybody else involved. The enormity of this impact can be difficult to describe in an initial attorney-client meeting. Bob had a unique way to warn clients contemplating or facing a lawsuit: imagine letting a wild animal loose inside of your house. You have no idea what damage will be done, where the animal will go, or who it might hurt. Bob made it clear he would be there for the client every step of the way—at least, as he put it, until they "strap you in the electric chair."

Bob would be constantly thinking about a case and thrashing around legal theories (sometimes making new law) to advance the client's interests. It was not uncommon for colleagues and clients to receive e-mails from Bob at all hours, and on weekends and holidays, too. When Bob had a novel legal theory that might win the case, he had to let people know immediately. Loudly. With passion.

Bob's legal career was vast and well-documented. He had many triumphs, great and small. As Tom St. John described in his unforgettable eulogy, Bob's passion for the law led him all the way to the United States Supreme Court to demand due process for a youthful offender who was held in contempt of court without a hearing. All told, he made four arguments to the Supreme Court. He was an Assistant U.S. Attorney, the state's first Public Defender, and founder of a successful law firm. In private practice, he was a force to be reckoned with: he was instrumental in obtaining the reversal of a \$100 million

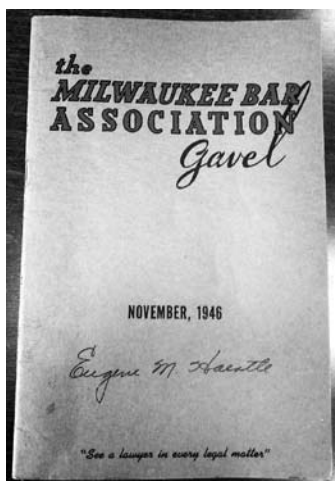


punitive damages verdict against a local power company, he helped a local airline keep its tax exemption, and he many times went to court to protect the rights of voters to have full access to the polls.

Bob loved politics, was afraid of nuts, and would have been comfortable conversing with a table full of sailors. One special time at the firm was lunch in the blue room. (The room wasn't really blue, but the chairs were, and the name stuck.) It was there we would get our daily dose of Bob—his theories and strategies for all ongoing matters in the firm, his views on the day's top political stories, his gradual

continued page 22

MBA Gavel Was Worthy Predecessor of Messenger



Two-thirds of a century ago, MBA members perusing their morning mail came across the *Milwaukee Bar Association Gavel*. A copy of the November 1946 issue, serendipitously unearthed from the MBA archives, is addressed on its back cover to Mr. Eugene M. Haertle in Room 204 of the Courthouse. Mr. Haertle apparently valued the *Gavel* enough to sign the front cover as an additional safeguard against loss. It nonetheless eventually escaped his possession and ended up from whence it came, where we undertook to dissect this time capsule.

The November 1946 *Gavel* (Vol. 8, No. 2) issued in 5 ¾" x 8 ¾" booklet format. It runs 28 pages. Four blank pages follow at the end—presumably for the reader's notes, although none were made in this copy. It is bound just as the *Messenger* is now, with two staples on the spine. It appears, like the *Messenger*, to have been published quarterly.

The masthead page of the *Gavel* (page 3) lists a staff that turns the current *Messenger* staff (both of us) green with envy: an editor-in-chief, no less than five associate editors, a business manager, and someone in charge of "Circulation and Exchange." There is no overlap between this staff and the MBA officers and Executive Committee members, who are listed next. The editor-in-chief was none other than Webster Woodmansee, the well-known publisher of the *Daily Reporter* for over 40 years. His obituary in 2000 noted that he graduated from law school in 1937 and worked in law offices for several years, but turned to publishing due to a lack of legal work. In 1985, the droll Woodmansee reminisced: "At the Junior Bar Association meetings we used to say no one came into the office in the morning, but things quieted down in the afternoon . . . [T]here was so little to do that . . . I eased into the Reporter." *Milwaukee Journal Sentinel* (Dec. 12, 2000).

This may help to explain the slogan that appears at the very bottom of the *Gavel's* light blue stock paper cover: "See a lawyer in every legal matter." Would we employ that slogan today? Well, not exactly, we think. Woodmansee's reminiscence suggests that in 1946 there may not have been enough "legal matters" floating around town to keep the bar busy. The return of lawyers from the war must not have helped. Nowadays, when daily life is positively awash in legal matters, and the number of lawyers and cost of employing them have likewise exploded, the hunt is not for those matters *per se* but for those relatively few that are worthy of bringing legal resources to bear. We doubt that any present-day lawyer, whether in private practice, public service, or on the bench, wants the public pouring in with every legal matter. At the very least, we would qualify the slogan: "See a lawyer in every significant legal matter" (i.e., those worth our while); or, "See a lawyer in every legal matter you can't resolve on your own."

The slogan on the cover raises a more fundamental question, however: given that the readership of the *Gavel* consisted entirely of lawyers, to whom was the slogan supposed to be directed?

Be that as it may, the 13 articles in the *Gavel* are divided between those addressing substantive legal issues—what we at the *Mess* call "hard law" articles—and reports of developments in the local legal community, principally MBA activities. The "hard law" articles include a digest of recent appellate decisions, both state and federal (pages 20-22). Others

address an anomaly in application of the statute governing curtesy, the estate to which a husband was entitled in his wife's real property upon her death (pages 4-5); an amendment of patent law to expedite the recovery of damages for infringement (pages 6-7, 9-10); and whether an incompetent wife has an inchoate right of dower or a homestead interest in real estate jointly owned with her husband (pages 12-13). All of those articles are reasonably clear, concise, and scholarly.

The title of the curtesy article, by Charles L. Goldberg of the MBA Real Estate Committee, caught our eye. In fact, it made us wince. It is: "Little Man, What Now?" No little, or any particular, man is the subject of the article, so "Little Man" can only refer to the practitioner-reader. Ouch. Was that appellation as condescending when written as it sounds to the modern ear? One hopes not; one fears otherwise. Perhaps it was an item of courthouse and law office banter then extant in Milwaukee, with a more benign tenor that is long lost in the mists of time. This is a long shot, but can anyone out there shed light on this mystery?

The *Gavel's* coverage of MBA activities is impressive, and it portrays a bar association that appears to have been every bit as vibrant as the one we have today. "With the Executive Committee" (pages 23, 25-27) is a detailed report of the proceedings of a very busy MBA Executive Committee, which met on August 6, August 20, September 3, September 11, and October 1. A Fall and Winter Lecture Series sponsored by the MBA at Marquette Law School is announced (page 13), along with continuing "Tuesday Noon Luncheon" meetings at the City Club, which featured speakers on diverse subjects (page 18). The *Gavel*, like the *Messenger*, lists new MBA members (page 22), but the *Gavel's* list includes asterisks beside the names of ex-servicemen. The list includes some noteworthy names, such as Jesse Habush and Henry Quarles. It also includes Alfred J. Sapiro, late uncle-in-law of the current *Messenger* editor. What are the odds?

In addition, the November 1946 *Gavel* just happens to describe the apparent genesis of the MBA's Lawyer Referral and Information Service (pages 14, 16-17). The issue sets forth a Proposed Plan for Legal Reference Service, "intended to provide legal service to all who apply to the Milwaukee Bar Association to be referred to an attorney." This plan was to be submitted to the MBA membership for adoption or rejection by referendum. All MBA members would serve on the Legal Reference Service panel unless they opted out, but panel members could designate fields of practice in which they would not accept cases. The plan stated that a panel member "shall be morally bound to charge only moderate fees to clients of small means, regardless of whether such fees adequately compensate the attorney for the work" and "shall not unreasonably refuse to accept each case referred to him." A "standard fee" of \$3.00 (presently \$20.00) was specified for the first half hour of consultation with the client.

continued page 20

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Lincoln's Gettysburg Address in Perspective

Robert H. Skilton*

(First of two installments)



The place was Gettysburg, the day was November 19, 1863. The occasion was the dedication of the National Cemetery where the Union soldiers who had died in the Battle of Gettysburg (July 1-3, 1863) were buried.¹ Before the huge crowd, assembled for the dedication ceremonies, Edward Everett, spell-binder, displayed his usual oratorical grandiloquence; on and on he went for two hours, but now broke off with a final flourish. A male group sang an ode. Then all eyes focused upon the gaunt man at the speaker's table. It was time for

him to speak; as President he ought to; let it be brief and to the point. The ceremonies had been protracted.

And now he spoke:

Four score and seven years ago our fathers brought forth upon this continent, a new nation, conceived in liberty, and dedicated to the proposition that all men are created equal.

Now we are engaged in a great civil war, testing whether that nation, or any nation so conceived and so dedicated, can long endure. We are met on a great battle-field of that war. We have come to dedicate a portion of that field, as a final resting place of those who here gave their lives that that nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here. It is for us, the living, rather, to be dedicated here to the unfinished work which they who fought here have thus far so nobly advanced. It is rather for us to be here dedicated to the great task remaining before us—that from these honored dead we take increased devotion to that cause for which they gave the last full measure of devotion—that we here highly resolve that these dead shall not have died in vain—that this nation, under God, shall have a new birth of freedom—and that government of the people, by the people, for the people, shall not perish from the earth.

Abraham Lincoln had come a long way to Gettysburg. From humble beginnings, with little formal education, he had by striving, learning, and experiencing, acquired insights, the grist for being master in the use of the English language, for marshalling words and making them do what he wanted them to do. He had honed his skills by almost numberless contacts with ordinary and extraordinary people served or opposed in his many years riding the circuit as a practicing lawyer—"A. Lincoln, Prairie Lawyer."²

He had the gifts of a great writer. He had a keen sense of word values. He could make words rise to a crescendo of emotion—"we cannot dedicate—we cannot consecrate—we cannot hallow—this ground." He could employ the perfect triad—"government of the people, by the people, for the people." He could arrange and compress ideas into symmetrical, sonnet-like structure. He had just spoken words that would be long remembered.

The Gettysburg Address is a literary masterpiece. But Lincoln's purpose in composing it was not to create art for its own sake. Speaking to the

living, at the grave of the dead, he sought to answer the anguished, bewildered cry, "What can justify this war? What can justify the carnage that took place here?"

What he was to say, he must say with brevity. "In our respective parts," wrote Lincoln to Everett the next day, "you could not have been excused to make a short address, nor I a long one."³

The challenge was formidable, even to Lincoln, an expert in terseness of expression.

How could he pack mighty political and constitutional concepts into a few words? Epigrammatic generalizations must be employed, even at the risk of oversimplification. Much must be left unsaid. Details, qualifications, could not be stated.

Thus, the Gettysburg Address is a remarkable example of *terseness of expression*—of simplicity of utterance. But there is nothing superficial in its simplicity. A lifetime of thinking and experience is compressed in it.

What follows is an attempt to demonstrate this, and in so doing show that in a few lines on the sad occasion Lincoln summed up a lifetime of thought. The purpose will be advanced by identifying certain themes in the address and illustrating how Lincoln dealt with those ideas more fully on other occasions.⁴ The illustrations chosen could often have been multiplied by many more quotations from Lincoln, but the essential feature of the Gettysburg Address—brevity—terseness of expression—would have been ill served by redundancy.

What follows is not, primarily, a discourse on the history of the times, although some reference to the historical setting may be expected as a gloss on what Lincoln said. And inevitably there will be reference to the constitutional significance of phrases in the address, where its words relate to the framework of government; here Lincoln's phraseology, though terse, had generative power.

Now, to proceed:

"A New Nation"

In Lincoln's view, the act of the Continental Congress in declaring independence from Great Britain resulted in the creation of a *new* nation, and *not* thirteen independent sovereign states. This was an important point to his argument that the Union was perpetual and indissoluble. The "compact-of-states" view of some, including among others the secessionists, was, in his opinion, historically not correct. Thus on March 4, 1861, in the gathering storm, he said in his first Inaugural Address:

Descending from these general principles, we find the proposition that, in legal contemplation, the Union is perpetual, confirmed by the history of the Union itself. The Union is much older than the Constitution. It was formed in fact, by the Articles of Association in 1774. It was matured and continued by the Declaration of Independence in 1776. It was further matured and the faith of all the then thirteen States expressly plighted and engaged that it should be perpetual, by the Articles of Confederation in 1778. And finally, in 1787, one of the declared objects for ordaining and establishing the Constitution, was "to form a more perfect union . . ."

This thought reinforced his view of his duty as President:

I therefore consider that, in view of the Constitution and the laws,

continued next page

the Union is unbroken; and, to the extent of my ability, I shall take care, as the Constitution itself expressly enjoins upon me, that the laws of the Union be faithfully executed in all the States. Doing this I deem to be only a simple duty on my part; and I shall perform it, so far as practicable, unless my rightful masters, the American people, shall withhold the requisite means, or, in some authoritative manner, direct the contrary.

Thus Lincoln, trained as an advocate, looked upon the Union as his client. His law training instructed him as to his presidential duties. On July 4, 1861, he declared, in his first message to Congress, summoned to deal with the existing emergency:

Our States have neither more nor less power than that reserved to them, in the Union, by the Constitution—no one of them ever having been a State out of the Union. The original ones passed into the Union even before they cast off their British colonial dependence; and the new ones each came into the Union directly from a condition of dependence, excepting Texas. And even Texas, in its temporary independence, was never designated a State. The new ones only took the designation of States, on coming into the Union, while that name was first adopted for the old ones in and by the Declaration of Independence. Therein the “United Colonies” were declared to be “free and independent States”; but, even then, the object plainly was not to declare their independence of one another, or of the Union; but directly the contrary, as their mutual pledge, and their mutual action, before, at the time, and afterwards, abundantly show. The express plighting of faith, by each and all of the original thirteen in the Articles of Confederation, two years later, that the Union shall be perpetual, is most conclusive.⁵

“Our Fathers”

“Four score and seven years ago our fathers brought forth a new nation.” As Lincoln intended the term, the “founding fathers” may be properly regarded as the spiritual fathers of *all* Americans of like mind. On July 10, 1858, replying to Senator Douglas, he said in a speech at Chicago:

We are now a mighty nation, we are thirty—or about thirty millions of people, and we own and inhabit about one-fifteenth part of the dry land of the whole earth. We run our memory back over the pages of history for about eighty-two years, and we discover that we were then a very small people in point of numbers, vastly inferior to what we are now, and with a vastly less extent of country,—with vastly less of everything we deem desirable among men,—we look upon the change as exceedingly advantageous to us and to our posterity, and we fix upon something that happened away back, as in some way or other being connected with this rise of prosperity. We find a race of men living in that day whom we claim as our fathers and grandfathers; they were iron men; they fought for the principle that they were contending for; and we understand that by what they then did it has followed that the degree of prosperity that we now enjoy has come to us. We hold this annual celebration [July 4] to remind ourselves of all the good done in this process of time[,] of how it was done and who did it, and how we are historically connected with it; and we go from these meetings in better humor with ourselves—we feel more attached the one to the other, and more firmly bound to the country we inhabit. In every way we are better men in the age, and race, and country in which we live, for these celebrations. But after we have done all this we have not yet reached the whole. There is something else connected with it. We have besides these men—descended by blood from our ancestors—among us perhaps half our people who are not descendants at all of these men, they are men who have come from Europe—German, Irish, French and Scandinavian—men that have come from Europe themselves, or whose ancestors have come hither and settled

here, finding themselves our equals in all things. If they look back through this history to trace their connection with those days by blood, they find they have none, they cannot carry themselves back into that glorious epoch and make themselves feel that they are part of us, but when they look through that old Declaration of Independence they find that those old men say that “We hold these truths to be self-evident, that all men are created equal,” and then they feel that that moral sentiment taught in that day evidences their relation to those men, that it is the father of all moral principle in them, and that they have a right to claim it as though they were blood of the blood, and flesh of the flesh, of the men who wrote that Declaration, and so they are. That is the electric cord in that Declaration that links the hearts of patriotic and liberty-loving men together, that will link those patriotic hearts as long as the love of freedom exists in the minds of men throughout the world.

Thus, in Lincoln’s words (brought up to the present by including all citizens and aliens regardless of ethnic origin), those who subscribe to the key principles of the Declaration of Independence have a right to claim the signers as “our fathers.”

And now, at Gettysburg, more than five years after he made that speech at Chicago, Lincoln could have updated it by adding that many, in this gruesome Civil War Between the States, had too been called upon to act like “iron men” (or women), and that there were many buried in this new cemetery whose blood lines in America did not go back to 1776, but who had by their sacrifice established that they were “blood of the blood, flesh of the flesh” of the nation’s progenitors.

“Conceived in Liberty”

Lincoln’s concept of liberty-under-law was tied together in the Gettysburg Address with equality-under-law. Lincoln held the view that a governmental and social system which promoted liberty for all, freedom of opportunity and freedom of choice for all to the maximum extent practicable, was most conducive to energetic and creative activity and national progress. It was this love of liberty which in his opinion actuated this country to declare its independence; this country, born in 1776, had been conceived in the heady climate of liberty.

On February 22, 1861, Lincoln stood in Independence Hall, Philadelphia—a stopping-place on his way to Washington and the assumption of awesome responsibilities. He reflected upon the spirit which animated this country from its inception:

I am filled with deep emotion at finding myself standing here, in the place, where were collected together the wisdom, the patriotism, the devotion to principle, from which sprang the institutions under which we live. You have kindly suggested to me that in my hands is the task of restoring peace to the present distracted condition of the country. I can say in return, Sir, that all the political sentiments I entertain have been drawn, so far as I have been able to draw them, from the sentiments which originated and were given to the world from this hall. I have never had a feeling politically that did not spring from the sentiments embodied in the Declaration of Independence. I have often pondered over the dangers which were incurred by the men who assembled here and framed and adopted that Declaration of Independence—I have pondered over the toils that were endured by the officers and soldiers of the army who achieved that Independence. I have often inquired of myself what great principle or idea it was that kept this Confederacy so long together. It was not the mere matter of the separation of the Colonies from the motherland; but something in that Declaration of Independence which gave liberty, not alone to the people of this country, but, I hope, to the world, for all future time. It was that which gave promise that in due time the weights should be lifted

continued page 20

Gettysburg continued from p. 19

from the shoulders of all men. This is the sentiment embodied in that Declaration of Independence. Now, my friends, can this country be saved upon that basis? If it can, I will consider myself one of the happiest men in the world, if I can help to save it. If it cannot be saved upon that principle, it will be truly awful. But if this country cannot be saved without giving up that principle, I was about to say I would rather be assassinated on this spot than surrender it.

(to be continued...)

* The author was Professor of Law, Emeritus, at the University of Wisconsin Law School from 1953 to 1981. He wrote this article shortly prior to his death. It is published through the efforts and with the permission of his son, Madison attorney and former State Bar President John S. Skilton.

Professor Robert Skilton had a lifelong interest in President Lincoln, probably stimulated by the fact that his maternal grandfather, Robert Beaton, served in the Third Pennsylvania Cavalry from July 18, 1861 (having been mustered up shortly after Bull Run) through August 24, 1864. Robert Beaton fought at Gettysburg and his name appears on the Pennsylvania Monument at Gettysburg. As a result of his service in the Civil War, Robert Beaton became a U.S. citizen on October 2, 1866—and thus the words of Lincoln at Gettysburg have particular resonance to the Skilton family. Professor Skilton taught Constitutional Law, among other courses, to several generations of law students at the UW Law School. His son John picked up on his father's interest in Lincoln (see, e.g., Skilton, "Abraham Lincoln: a Lawyer for the Ages," 2011 WIS. L. REV.), and served as chair of the Wisconsin Lincoln Bicentennial Commission (2009).

¹Extract from Pennsylvania Governor Curtin's Annual Message, January 7, 1864:

After the Battle of Gettysburg, in which loyal volunteers from eighteen states, including Pennsylvania, were engaged, it appeared to me proper that all those states should unite in establishing a cemetery, on the site in which their soldiers who had fallen in that conflict, should be honorably interred. . . . A site was purchased at a cost of \$2,475.87, and the conveyances made to the Commonwealth. On communicating with the authorities of the other states, they all readily agreed to become parties to the arrangement, and on the 19th day of November last, the cemetery was dedicated with appropriate ceremonies. . . .

Revised Report of the Select Committee Relative to the Soldiers' National Cemetery (Singerly & Myers, Harrisburg 1865) at 5. An Act of Congress in 1891 established the Gettysburg National Military Park dedicated to both Union and southern dead, and the site came under federal control. *Gettysburg Administrative History* (UNRAU U.S. Department of Interior 1991) at 81. I am indebted to Nancy Paul of the Law Library of the University of Wisconsin for these citations.

The time of the ceremonies was put off to the 19th of November to accommodate Everett, whose address was intended to be the centerpiece of the ceremonies. *Revised Report* at 168-9. Before the ceremonies, the bodies of the Union dead had been reburied in the cemetery.

²John S. Duff, *A. Lincoln Prairie Lawyer*, (Rinehart 1960)—perhaps the best work on Lincoln's career as a circuit-riding lawyer. In his frequent role of criminal defense attorney, Lincoln's conceived duty to his client often featured tactics leading to postponement of trial; sometimes an obviously guilty person would go free. See the New York Times News Service Report,

Amistad continued from p. 11

The legal case itself turns on the question of whether the Africans were born in Cuba (making them the legal property of the Spanish masters) or in Africa, as Baldwin argues, making them abducted free men and women (and children) who were within their rights to take whatever steps necessary to escape. A manifest found on the impounded vessel suggests the latter origin, and in a moment of genuine legal triumph the trial judge so rules—freeing the Africans, awarding the ship as salvage to the U.S. sailors, and ordering the Spaniards to be charged criminally. The judgment is all the more triumphant because the judge has been placed on the bench by Van Buren's men, presumably to reach the opposite conclusion.

But as every trial lawyer knows, what the trial court gives the court of appeals can take away. When the government engineers an appeal, Cinque loses his confidence in Baldwin. At this point John Quincy Adams, resistant to earlier appeals for his help by the abolitionists and Baldwin, agrees to enter the fray. He is (of course) played as irascible but wise by Hopkins. He meets Cinque and works with Baldwin to prepare the appeal. What attracts him to the case as much as the Africans' plight is his profound disdain for Van Buren's meddling with the courts. Mercifully, the film glosses over the intermediate

summarizing recent discoveries by the Illinois Historic Preservation Agency, *Sarasota Herald-Tribune* (2/9/1992) at 13A. For first hand observations of Lincoln as a lawyer, including examples of his honesty in practice, see Herndon's *Life of Lincoln* (The Herndon's Lincoln Publishing Company, Springfield, Reprint) at 307-18, 332-60.

³Everett's speech should not be denigrated by comparison with Lincoln's—it was in a different genre. Lincoln expressed his admiration for it in remarks in Washington to a Philadelphia delegation on January 24, 1865, after Everett's death. The speech is printed in its entirety in *Revised Report of the Select Committee*, supra n.1, at 182-209.

⁴The text of quotations from Lincoln is (with one minor exception) taken from *Abraham Lincoln, His Speeches and Writings* (edited by Roy P. Basler, paperback edition Da Capo). See also *The Collected Works of Abraham Lincoln* (edited by Basler, Pratt and Dunlap, 8 vols., plus index, New Brunswick, NJ 1952-55); and *Lincoln, Speeches, Letters, Miscellaneous Writings, Presidential Messages and Proclamations* (edited by Don E. Fehrenbacher, Library of America, 2 vols. 1989).

⁵*The Constitution of the United States* (Commission on the Bicentennial of the United States Constitution 1986) at 43.

Gavel continued from p. 17

Of course, at least one legal anachronism at which we can chortle is inevitable, given the passage of 67 years. Here, it is the article entitled "Minimum Collection Fees Increased" (page 10), which announces changes in the MBA's minimum fee schedule in collection cases so as to conform to the Commercial Law League of America schedule. Whoops. We are, like, so legally *evolved* compared to 1946, aina hey?

The advertising in the *Gavel* is plentiful and, like the substantive law articles, it is weighted toward probate and real estate practice rather than litigation. Advertisers include banks and bonding companies, insurance agents (but not for malpractice insurance), title companies, and the administrator of the MBA-sponsored health and accident policy. The only ad targeting litigators, although perhaps not exclusively, is a dual ad on page 28 for printing and binding by Burton & Mayer, Inc., and linotype composition and make-up by Hertting Typesetting Company ("Day and Night Service").

The 28 pages of the *Gavel* are devoid of color print, photographs, and any discernible attempt at humor. There is no movie review. There are no snide comments by some daft editor. This unadorned publication doesn't put on airs: it is a serious chronicle of a serious, albeit somewhat underemployed, profession.

And you know what? It's good.

appeal. Late in the final act of *Amistad*, Hopkins as Adams implores the Supreme Court—the majority of whose members at the time were southern slaveholders—to recognize the importance of judicial independence in the American constitutional system, employing as a foil the complaints the teenaged Spanish monarch has sent to Van Buren about the impertinence of American judges. But he also frankly suggests that if freeing the Africans portends civil war, "then let it come." With Cinque in the gallery, the Justices return to the bench and uphold the trial court. His shackles are at last removed, and in the final scene we see Cinque returning to the African coast.

As compared to the best courtroom movies, *Amistad* is handicapped by trying to cover too much historical ground. This prevents its legal narrative from playing out elegantly. And while Spielberg mostly avoids preachiness and "noble savage" representations, there are at least a few times when they seem to be hovering nearby. Considering the subject matter, this is probably unavoidable. Notwithstanding these cavils, I recommend this film. *Amistad* is not a great movie, but it is at least a good movie about greatly important events, and a rare filmic representation of both trial practice and appellate practice in 19th century America.



Pro Bono Corner



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

Legal Options for Trafficked and Underserved Survivors (LOTUS)

Contact: Attorney Rachel Monaco-Wilcox
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Milwaukee, WI 53222
Phone: 414-258-4810 x. 442
E-mail: monacowr@mtmary.edu

Community leaders and media outlets in Milwaukee have focused increasing attention recently on the problem of sex trafficking in our community. Trafficking—particularly of underage youth—is a significant concern for local law enforcement and child welfare officials, who recognize Milwaukee's role as a major source of trafficked minors throughout the region. Victims of trafficking often face myriad legal consequences of their own, ranging from criminal records for offenses such as prostitution or shoplifting, to money judgments in small claims court, to employment and housing issues.

Legal Options for Trafficked and Underserved

Survivors (LOTUS) is one local initiative seeking to address those legal needs. Working with a coordinator based at Mount Mary University, this group of volunteer attorneys, law students, and undergraduate interns helps victims to evaluate their legal options and protect their rights in circumstances related to their victimization. LOTUS serves a range of crime victims, but focuses in particular on victims of trafficking.

“Often there are no easy answers to the legal problems that come from victimization, and the victim is the person least able to confront an angry landlord, a reluctant employer, or a court official who hasn't learned of all of the background in a case,” said Rachel Monaco-Wilcox, Assistant Professor of Justice at Mount Mary University and Coordinator of LOTUS. “Our advocates are trained to be the middle tier and bridge between victims and the lives they hope to move on with.”

Volunteers with LOTUS find the work to be particularly rewarding. As volunteer attorney Kate Knowlton pointed out, “LOTUS helps

ensure that those who might lack not only the ability to advocate for themselves, but even the understanding or belief that they are entitled to advocacy, have access to the basic justice that we take for granted.”

There is much more to be done, and LOTUS needs many more volunteer attorneys to assist with standing by victims in court; writing letters or representing clients in civil legal matters; and acting as resources in employment, family, housing, and other areas of law about which victims may have questions. LOTUS particularly seeks volunteers who are innovators in the legal system, and who can help problem-solve in areas where there may not be clear rules. There will be a training session for volunteers in the spring, featuring national expert Meg Garvin of the National Crime Victim Law Institute.

The work of LOTUS reaps considerable rewards for our community. “In time,” Monaco-Wilcox noted, “victims who see themselves as survivors give back with their own efforts to make a difference.”

MBA Law and Technology Conference Returns December 5

The Milwaukee Bar Association has brought the Law and Technology Conference back to Milwaukee. The one-day conference will be held December 5 at the MBA, 424 East Wells Street in Milwaukee.

The first Law and Technology Conference was held over ten years ago. The conference, brainchild of the late Ross Kodner of MicroLaw, outgrew several different meeting spaces until it eventually merged into the current Wisconsin Solo and Small Firm Conference. Kodner wanted to bring the conference back to Milwaukee, and began the initial planning for a new conference before his untimely death in August of this year.

This year's conference features both local and national speakers on many timely legal and technology topics. Steven J. Best of Affinity Consulting Group headlines the speaker list. Best is an attorney and legal technology consultant with a background in law, accounting, and economics. He will be presenting “Bills Out – Money In: Getting Paid,” “iPad for Lawyers,” and “Top 10

Technology Mistakes Law Firms Make.” Nerino J. Petro, the Practice Management Advisor for the State Bar of Wisconsin, will discuss “What's Hot in Legal Technology” and the “PDF/Paperless Office.” Jeffrey S. Krause of Solfecta (formerly known as Krause Practice Management) will join Petro for “What's Hot,” in addition to speaking on “Growing Your Practice Profitably and Ethically” with Thomas G. Schober. Both Petro and Krause are attorneys and legal technology consultants. Schober is a Milwaukee-area attorney at Schober, Schober & Mitchell.

Other Milwaukee-area speakers include Jeremy Cherny and Mark Goldstein. Cherny will present “Office 365: Hosted Exchange and a LOT More.” He is the founder of Tobin Solutions, a Milwaukee provider of IT solutions. Goldstein, a Milwaukee labor and employment attorney at Goldstein Law Group, will address “Social Media and the Law.”

Two national speakers round out this year's presenter list. Bruce Malter, Senior Vice President of Consulting Services at D4 LLC

in Chicago, will present “Computer Forensics 101.” Diarmund Truax, Senior Litigation Technology Consultant at Visual Advantage in Denver, will tackle “Courtroom Technology and Trial Graphics: Bridging the Gap Between Modern Communication and Litigation.”

The full conference agenda with detailed session descriptions can be found on the MBA website, www.milwbar.org, under the Continuing Legal Education Calendar link. The cost is \$149 for MBA members, \$199 for non-members, and \$129 for support staff. Applications for CLE credit will be submitted for all sessions, and upon approval, the conference should qualify for a maximum of six credits, including two ethics credits. Conference registration includes breakfast and lunch, and door prizes will be handed out at the end of the day.

The Paralegal Association of Wisconsin and the Greater Milwaukee Association of Legal Professionals have joined the MBA as co-sponsors of this year's conference.

Burial Plot continued from p. 15



another, except Horatio N. Wells! His frame looks more like a movie poster from *The Invisible Man*. Apparently Wells' obscurity is still in effect.

As this story began to take shape, I became a little protective of our man Wells, and took offense at many slights against him. At least the MBA pays homage to this leading member of the bar and the community, I thought, by the very fact that our office is located at 424 East Wells Street. With Kilbourn and Juneau Avenues several blocks away, I felt a sense of pride in our serendipitous location. Of course, one final indignity remained. Jim Owczarski, Milwaukee City Clerk, promptly answered my request for information with the stunning news that Wells Street is not named for Milwaukee's second mayor, but for Daniel Wells, Jr. This other Wells was a very successful businessman, farmer, surveyor, justice of the peace, and a U.S. Congressman. When he died in 1902 at the ripe old age of 93, he was reputedly the wealthiest man in the state, with

a net worth estimated at \$15,000,000.⁹

No street, no portrait, not even a recognized grave is what our city offers one of its most important founders. The chasm between a successful career and a destitute end, between adulation and obscurity, may be wide, but it can be easily overcome. *Tempus Fugit Memento Mori*.

¹Minutes found in MBA files.

²William Janz, "R.I.P.: Horatio N. Wells Knew Life's Highs, Lows," *Milwaukee Sentinel* (May 24, 1993).

³*History of Milwaukee, Wisconsin* (The Western Historical Company, Chicago 1881) at 665.

⁴James Smith Block, *Pioneer History of Milwaukee* at 454.

⁵Biographical information on Horatio N. Wells from *Pioneer History of Milwaukee* at 61; *History of Milwaukee, Wisconsin* at 656; and John R. Berryman, *History of the Bench and Bar of Wisconsin* (H.C. Cooper, Jr. & Co., Chicago 1898) at 44-45.

⁶Ellen D. Langill, *Foley & Lardner, Attorneys at Law 1842-1992* (The State Historical Society of Wisconsin, Madison, WI 1992) at 5.

⁷*History of Milwaukee* at 656.

⁸Berryman at 44.

⁹Information on Daniel Wells, Jr. from www.wisconsinhistory.org (viewed November 4, 2013).



Election continued from p. 10

distribution anyone who asks. At 9:35 on election night, the clerk e-mailed the correct results to the *Patch*, *North Shore Now*, and the Associated Press (which apparently ignored the email and reported the Wisconsin Election Service's numbers). The League of Women Voters had not put itself on the clerk's distribution list.

After sorting out the mess, the clerk had the unfortunate duty of telephoning Terry McGauran to inform him that certain media outlets had misreported the results. McGauran, a gracious and civic-minded man, said that he appreciated and will save the letters from Milwaukee County Executive Chris Abele and state Senator Chris Larson congratulating him on the win.

Human beings make mistakes. As mistakes go, this one was harmless. It caused a few individuals discomfort for a few hours. With election-night reporting, as with the practice of law, things happen fast and people occasionally mess up. We all should try to double check our facts. Sometimes we fall short. When such things happen, maybe our best response is to get over it by lunch.

Douglas H. Frazer is a trustee on the Fox Point Village Board. The views expressed are his own and not necessarily those of the village, the village board, other village board members.

¹Despite its mission to "operate in an open and effective manner," the League was reluctant to reveal the name of, or facilitate an interview with, its Fox Point election-night representative.

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Friebert continued from p. 16

and grudging respect for Brett Favre (until the pick in the game against the Giants, when it vanished completely), his guidance on the ethical practice of law, and his jokes. Or at least the punch lines, which we all learned by heart over the years. ("Know it? I wrote it!") Yes, Bob, you did.

Bob was a dedicated family man, friend, attorney, law partner, boss, and community advocate. To us, he was a mentor who taught us invaluable lessons about ethically practicing law (including: when in doubt, file a notice of appeal and list every conceivable issue) and working tirelessly for our clients. Despite the continued negative media about and public criticism of attorneys, Bob demonstrated daily that being a member of the legal profession and serving clients is still an honor and a privilege.

Thanks for everything you taught us, Bob. We miss you.

Google continued from p. 8

While the practice of bidding on competitors' names is not yet prohibited by Wisconsin legislation, case law, or ethical rules, a well-advised Google advertiser will refrain from opening the door to this potential trouble for such a low volume of traffic.

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¹2013 WI App 34, 346 Wis. 2d 709, 828 N.W.2d 876, review denied (May 13, 2013).

²http://www.abajournal.com/news/article/law_firm_sued_over_claimed_use_of_competitors_name_as_google_adword/ (viewed November 9, 2013).

³The Ninth Circuit, in reversing the grant of a preliminary injunction, found that the practice of bidding on a competitor's name in Google and similar advertising was unlikely to amount to actionable trademark infringement. *Network Automation, Inc. v. Advanced Systems Concepts, Inc.*, 638 F.3d 1137 (9th Cir. 2011).



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