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FEATURES

12 A Textbook Case - Annals of Justice
Practical use of something learned in law school
by Steve LaCheen

16 Eichman at the Bus Stop
Large photos of Nazi leader plastered on Berlin bus stop
by Michael J. Carroll

18 Climate Change: Time to Act
Temperatures are rising, and lawyers must play a leading role
in finding solutions
by Steve Harvey

24 Service Matters
Meet Albert S. Dandridge III, 88th Chancellor of the
Philadelphia Bar Association
by Bernard W. Smalley Sr.

32 Stretching His Legs on Appalachian Trail
He takes a break from his practice to make the trek from
Georgia to Maine
by Grant E. Nichols

36 Marathoner for One Year
Rediscovering a love for running
by Matthew Weinstein

40 Nothing Like a Dame
Visit to hotel bar leads hospitality chain to change its policy
by Dona Kahn

DEPARTMENTS

4 From the Editor by M. Kelly Tillery

6 Briefs

7 In Memoriam

9 Ethics
by Daniel J. Siegel
The ethical issues posed by client use of social media

39 Justice Ruth Bader Ginsburg Pursuit of
Justice Legal Writing Competition Winner
by Mark T. Wilhelm
In the name of electoral integrity – the evolving
constitutionality of voter identification law

42 Technology
by Daniel J. Siegel
Essential mobile technology for lawyers on the move

46 Book Review
by M. Kelly Tillery
Redeeming the Dream – The Case for Marriage Equality

48 That Was Then - 1995
Law Week Stylish Appeal Charity Fashion Show
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Democracy is under siege in this nation. Not by ISIS, Khorasan, Al Qaeda, Ebola or Putin. Rather by an insidious domestic threat as serious as the internecine war that 150 years ago tested whether this nation or any nation conceived in liberty and dedicated to the proposition that all men are created equal could long endure.

Fortunately, this nation did endure that challenge to our democracy – at an astonishing price in blood and treasure. While that threat to the foundation of the republic was as open and blunt as possible, the modern equivalent is much more subtle, clever and thus, nefarious.

Some say that the infection of our electoral process by big (and dark) money permitted by *Citizens United v. FEC*, 558 U.S. 310 (2010) or the relentless systematic gerrymandering of congressional districts permitted by *Vieth v. Jubelirer*, 541 U.S. 947 (2004) alone or together are the greatest dangers to our sacred democracy. While each in its own way is reprehensible, and part of a larger, well-organized effort to prevent as many people as possible from voting one way, the most abhorrent threat is the nationwide effort to directly actually disenfranchise eligible voters. The most fundamental right in a democracy – the right to vote is, for millions, in grave danger.

Our history includes stunning examples of substantial enfranchisement, all by constitutional amendment remedying past disenfranchisements based upon certain criteria – 15th Amendment (1870) – “color, race, or condition of servitude”; 19th Amendment (1920) – “sex,” and 26th Amendment (1971) – “age” (18 years or older). And, of course, the 24th Amendment (1964) which prevented disenfranchisement “by reason of failure to pay any poll tax or other tax.” Each was required, along with scores of enabling acts and judicial decisions, because our system, while paying lip service to universal suffrage, has from its inception been undermined by a never-ending series of legal and extra-legal schemes to prevent certain groups from voting.

Not coincidentally, my own first effort to cast a ballot, here in Pennsylvania, met with the arcane and cumbersome laws designed to prevent young, liberal students from voting. I turned 18, voter-eligible, just a month before the 1972 McGovern-Nixon presidential contest wherein the war in Vietnam was the central issue. Because I had resided in Pennsylvania for less than 90 days, I was caught between the parochial absentee voting requirements of my state of origin, Louisiana, and the restrictive residential requirements of my new home state, Pennsylvania. At the polls in Swarthmore, some haughty, blue-haired matron coldly told me I could go to court in Media, try to convince a judge that I should be able to vote, get an order and come back and maybe the polls would still be open. In my then naiveté, I actually thought Pennsylvania might be different than Louisiana. Not so much. I would have preferred a literacy test or a poll tax.

Modern voter suppression, dilution and disenfranchisement takes many and varied forms, all of which fit, however, into five categories (1) voter identification requirements, (2) time and location restrictions, (3) attacks on voter registration, (4) “purging” voter rolls and (5) barring felons from voting. Not to mention, also blocking meaningful immigration reform. The Disenfranchisers are as relentless as they are creative in finding new ways to legislate disenfranchisement. And, yes, they are here in the Commonwealth of Pennsylvania.

In 2008 a divided (6-3) U.S. Supreme Court upheld an Indiana voter suppression law requiring government-issued photo identification at the polls, holding that “even-handed restrictions” protecting the “integrity and reliability of the electoral process itself” pass constitutional muster. *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008). At least 16 states have such requirements and more are planned. It should not be surprising that this same “facially neutral” reasoning was used often by the court more than 100 years earlier to uphold a variety of legal disenfranchising statutes. And in 2013, an even more divided court (5-4), led by the new Four Horsemen (Roberts, Scalia, Alito and Thomas), emasculated The Voting Rights Act of 1965 reaching the tone deaf conclusion that “things had changed dramatically” and thus there was no longer a need for the federal government to approve voter restrictions in Southern states. *Shelby County v. Holder*, 557 U.S. 193 (2013) Au contraire, mes amis.

While litigation will always be an avenue to challenge the Disenfranchisers, we obviously cannot rely upon the courts
alone to protect our democratic system. This battle must also be fought at the state legislative level and, more importantly, in the court of public opinion. Frankly, we need to turn public opinion on this issue with the same astounding speed and thoroughness with which it has so recently changed on marriage equality.

If those pressing voter restrictions really believed in democracy and universal suffrage, they would instead enact laws designed to enfranchise, to encourage people to vote and to make it easier to do so. The truth is, of course, obvious – they do not want more people to vote because they fear, and rightfully so, that new and certain vulnerable groups of voters will not vote as they wish.

However, recent history teaches that the current electorate may not be quite as passionate about voting as our forebears or I. In the recent mid-term elections, only 36 percent of eligible voters voted. Which means about 19 percent of eligible voters determined the political fate of the nation for at least the next two years. And at least half of that 19 percent vote against their own economic interest being either deceived or distracted by the shiny objects of fear and extraneous emotional social issues. So, our “democracy” runs on the will of less than 10 percent of the electorate? Perhaps we get the government we deserve.

Lest you think this well-funded, comprehensive, coordinated national campaign of voter suppression could not possibly be successful in this country, see the U.S. Supreme Court’s Oct. 18, 2014 order in Veasey v. Perry (No. 14A393 and 14A404) which permitted Texas’ Voter I.D. law to take effect for the mid-term election – shades of things to come.

And, keep in mind, that the progenitors of today’s Disenfranchisers, Southern senators, congressmen and state legislators, by 1911 had repealed virtually all state and federal Reconstruction-era election laws and enacted literacy tests, poll taxes, property tests, understanding tests, the white primary, grandfather clauses, stringent residency requirements and inconvenient places and times for registration and voting, (everything but “Voter I.D.” – a relatively recent, creative suppression tool), disenfranchising every black voter who had been enfranchised less than 50 years before by the 15th Amendment. It would take another 50 years and the passage of the 24th Amendment (1964) and The Voting Rights Act (1965) to begin to reverse these legal obscenities.

Although the Disenfranchisers shamelessly pretend to have the noble purpose of protecting the integrity of the process, all but the most blind and dense, including a few Supreme Court justices, do not see (or wish to see) through this ruse. However, as with so many on the wrong side of history, technology will overrun them. Secure online voting systems will one day enable every eligible voter to vote easily. We are quite creative when we want to be. The first patent of our most prolific inventor, Thomas Edison, was for an electromagnetic voting machine. (June 1, 1869, U.S. Pat. No. 90646A). We do virtually everything else online and there is no reason why we cannot devise and implement secure online voting systems that will finally make universal suffrage and democracy a reality in this country and end the disingenuous efforts of a powerful few to silence the votes of the powerless many.

Canada, Sweden, Switzerland, Latvia and Estonia have all had excellent experience with online voting. As we take pains to protect the Baltic states from the Russian Bear, perhaps we can also learn something from them and enfranchise millions via new technology. Right after we join the rest of the world (except also Liberia and Myanmar) and adopt the metric system.

M. Kelly Tillery (tilleryk@pepperlaw.com), a partner with Pepper Hamilton LLP, is Editor-in-Chief of The Philadelphia Lawyer.
Pro Bono Work on the Rise for One-Third of Lawyers

One in three lawyers (33 percent) recently said the number of hours they work on a volunteer basis has risen over the past five years. In fact, 45 percent of lawyers said they dedicate 50 or more hours of their time each year to pro bono service. The average number of pro bono hours reported was 56.

“Helping others” was overwhelmingly cited by lawyers as the greatest benefit of pro bono work, followed by “developing skills or legal expertise” and “enhancing professional reputation or career,” the research found. The survey was developed by Robert Half Legal. Lawyers in the U.S. and Canada were asked, “Has the number of hours you work on a pro bono or volunteer basis increased or decreased in the last five years?” Fifteen percent said their hours significantly increased; 18 percent noted a slight increase; 10 percent said there was a slight decrease; 6 percent noted a significant decrease; and 51 percent reported no change.

“While many lawyers provide legal services on a volunteer basis for goodwill, establishing a formal pro bono program within a law firm can yield added benefits,” said Charles Volkert, executive director of Robert Half Legal. “Pro bono work not only boosts associates’ morale and enhances the development of important skills, it also can help improve a firm’s reputation and increase its ability to attract clients and prospective associates.”

Chief Legal Officers Wield Buying Power to Control Outside Counsel Expenses

Corporate law departments are wielding their buying power to drive down expenditures on outside counsel, and innovating from within to further control costs, according to a survey by Altman Weil.

“The impact of the recession on in-house law departments has been twofold,” said Daniel J. DiLucchio, survey author and Altman Weil principal. “Internal department resources have been constrained in many cases, but at the same time law departments have gained more leverage over external resources. Chief legal officers (CLOs) are buyers in what is currently a strong buyers’ market.”

The two methods CLOs used most frequently to control costs in the last 12 months are direct price reductions from outside counsel, and alternative or fixed fee arrangements, according to the survey. The most common price reduction — received by half of all law departments surveyed — is between 6 percent and 10 percent. The number of departments receiving average discounts of more than ten percent is 36 percent this year, a jump from 28 percent in the 2013 survey.

Along with targeting outside counsel pricing, CLOs also manage costs by managing the distribution of work to law firms. This year, 40 percent of those surveyed have shifted law firm work to in-house lawyer staff; 36 percent shifted work to lower-priced firms; and 34 percent reduced the total amount of work sent to outside counsel. Of all cost control efforts undertaken in the last 12 months, CLOs report that shifting work in-house is the one that yielded the greatest cost reduction.

“Law departments usually can do work less expensively in-house if they have the resources in place,” said DiLucchio.

Two-thirds of CLOs said they have increased their departments’ use of technology tools to increase efficiency in the delivery of legal services. More than half have undertaken a restructuring/reorganization of internal resources, and 45 percent have made greater use of paralegals and other paraprofessionals.
More people are getting gift cards, particularly over the holiday season. Gift cards are purchased from retailers, restaurants, and banks or other financial institutions.

In response to various abuses, the Federal Trade Commission passed rules more than three years ago to protect consumers. These are worthwhile revisiting this time of year.

Money on a gift card cannot expire for at least five years from the date the card was purchased, or the date additional money was loaded onto the card.

The expiration date of the gift card must be clearly disclosed on the card or its packaging.

A fee can be charged for the purchase of a card, which amount must also be disclosed on the card or its packaging.

An “inactivity” fee can be charged, nor more than once a month, if a card has not been used for a year.

States may add their own rules but Pennsylvania has not done so.

Note that these rules do not apply to loyalty, reward or promotional cards issued directly to a consumer, such as those based on frequent customer or points status.

By David I. Grunfeld

**IN MEMORIAM**

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<th>Age</th>
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<td>May 5, 2014</td>
<td>83</td>
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<td>Aug. 15, 2014</td>
<td>69</td>
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<td>Brandi Brice</td>
<td>Oct. 16, 2014</td>
<td>37</td>
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<td>William T. Windsor Jr.</td>
<td>Sept. 8, 2014</td>
<td>87</td>
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<td>Gloria Casarez</td>
<td>Oct. 18, 2014</td>
<td>42</td>
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<td>Judge Meyer C. Rose</td>
<td>Oct. 1, 2014</td>
<td>96</td>
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<td>Andrew Touchstone</td>
<td>Oct. 21, 2014</td>
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<td>Marilyn L. Walder</td>
<td>Oct. 7, 2014</td>
<td>69</td>
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<tr>
<td>Margaret Mary Flores</td>
<td>Oct. 29, 2014</td>
<td>43</td>
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Have you considered a contribution to the Philadelphia Bar Foundation in memory of a deceased colleague? For information, call Jessica Hilburn-Holmes, Executive Director, at 215-238-6347.

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Mid a mixed outlook for sales and profits during the next six months, U.S. women business owners plan to focus on cash flow, improved efficiency and customer experience.

The PNC Women Business Owners Survey found 44 percent expect their sales to increase and 47 percent expect them to remain the same. As for profits, 35 percent forecast an increase while 47 percent foresee no change, according to the findings announced in conjunction with National Women’s Small Business Month.

This caution is driven by uncertainty about the U.S. economy as 54 percent are optimistic about the performance of the national economy in the next six months while 43 percent are pessimistic.

On the hiring front, three out of four say their number of full-time employees will remain the same, while only 9 percent plan to hire and 5 percent expect to reduce staff in the next six months.

Their focus is on increased efficiency and using technology to improve customer experiences. Among those not hiring, one in three choose to do more work with fewer employees. Further, when asked about the role of technology in their business, they are most focused on improving their company’s online presence (29 percent) and customer experience (23 percent).

**THREE LIKELY ACTIONS**

The three actions women owners are most likely to take in the next six months are:

- Focus on ways to improve cash flow (68 percent)
- Upgrade technology to improve efficiency (48 percent)
• Improve the customer experience with technology (44 percent)

Women-owned firms are influential. Women own more than 9 million businesses in the United States, employ nearly 8 million people and generate more than $1.4 trillion in sales nationwide (source: The National Association of Women Business Owners).

Methodology

The PNC survey of women business owners was conducted as part of our biannual Economic Outlook survey. Surveys were conducted between July 24 – Sept. 12, 2014, by telephone within the United States among female respondents representing small to mid-size businesses with annual revenues of $100,000 to $250 million and more than 50 percent female ownership. The results given in this release are based on interviews with 154 businesses nationally. Sampling error for the women business owner results is +/- 7.9 percent at the 95 percent confidence level. The survey was conducted by Artemis Strategy Group (www.ArtemisSG.com), a communications strategy research firm specializing in brand positioning and policy issues. The firm, headquartered in Washington D.C., provides communications research and consulting to a range of public and private sector clients.

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Imagine this scenario. Your client was injured in an accident, and claims that because of the herniated discs in his lower back he can no longer perform his job as a construction worker. You are preparing for trial when defense counsel serves a set of interrogatories and a request for production of documents requesting a complete copy of the client’s Facebook page, including photographs, etc. You then go online and take a look at the client’s Facebook page and discover that there are some great photos of the client parasailing while on vacation. There are also some photos of your client shoveling out his house during last winter’s storms, accompanied by boasting captions like, “Snow can’t stop me,” and “I may be 50, but I can still shovel like I’m 18.” Now what do you do?

• Can you tell the client to change his privacy settings because his Facebook posts are available for “everyone” to see?
• Can you instruct the client to remove the photos and other content that you know will damage his case?
• Do you have to produce the Facebook page and the photos?

Of course, your real concern is what disclosure of this information do to the value of the case – and to your fee? After all, this was going to be a million dollar case.

The Philadelphia Bar Association Professional Guidance Committee recently addressed these issues in Opinion 2014-5. Its advice applies to all social media websites, such as Twitter and Instagram, concluding that, subject to the limitations described below:

• A lawyer may advise a client to change the privacy settings on the client’s Facebook page.
• A lawyer may instruct a client to make information on the social media website “private,” but may not instruct or permit the client to delete/destroy a relevant photo, link or other content, so that it no longer exists.
• A lawyer must obtain a copy of a photograph, link or other content posted by the client on the client’s Facebook page in order to comply with a request for production or other discovery request.
• A lawyer must make reasonable efforts to obtain a photograph, link or other content about which the lawyer is aware if the lawyer knows or reasonably believes it has not been produced by the client.

Although the opinion focused primarily on Facebook, it notes that clients’ use of social media websites, such as Facebook, raises ethical concerns. At its most basic, this inquiry focuses on a party’s and an attorney’s duty to preserve evidence, and that this duty applies to information regardless of form, i.e., discoverable information may not be concealed or destroyed regardless whether it is in paper, electronic or some other format.

The issue of the discovery of social media implicates various Rules of Professional Conduct, including Rule 1.1 (“Competence”), Rule 3.3 (“Candor Toward the Tribunal”), Rule 3.4 (“Fairness to Opposing Party and Counsel”), Rule 4.1 (“Truthfulness in Statements to Others”) and Rule 8.4 (“Misconduct”). In particular, the Opinion concluded “in order to provide competent representation under Rule 1.1, a lawyer should advise
THE LAW OF
Oil & Gas
IN PENNSYLVANIA

The definitive guide to oil and gas issues in Pennsylvania

Pennsylvania’s law of oil and gas was originally developed by the courts in the nineteenth century. Significant statutory and regulatory controls were not developed until the mid-twentieth century. The courts, General Assembly, and Commonwealth agencies are extensively reevaluating existing law in this area. This treatise examines both title and regulatory issues relating to oil and gas. This examination is made both from the perspectives of land and mineral rights owners and the oil and gas industries. The treatise thoroughly explores the rich history of oil and gas legal concepts and the technical, environmental, and regulatory issues unique to exploration for and production of oil and gas in Pennsylvania.

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clients about the content of their social media accounts, and their obligation to preserve information that may be relevant to specific proceedings.” Thus, “a lawyer should (1) have a basic knowledge of how social media websites work, and, (2) advise clients about the issues that may arise as a result of their use of these websites.”

Turning to the meat of the inquiry, the Committee emphasizes that although a lawyer may advise a client to change the privacy settings on the client’s Facebook page, including making the page “private,” the lawyer may not instruct a client to delete/destroy a relevant photo. In addition, the lawyer must obtain a copy of a photograph, link or other content posted by the client on the client’s Facebook page in order to comply with a request for production, and must make reasonable efforts to obtain any photographs, links or other content about which the lawyer is aware if the lawyer knows or reasonably believes it has not been produced by the client.

Social media – which seems to be evolving daily, is a critical area about which attorneys must be aware. Clients use social media without regard for its implications in their legal disputes, and there are many reported cases when courts have ordered that information on these sites is discoverable, and lawyers who instruct clients to permanently destroy information on these sites have lost their licenses and been subject to significant sanctions. Consequently, lawyers must be mindful that the Rules of Civil Procedure and the Rules of Professional Conduct apply to electronic information in the same way that they have always applied to other forms of information.

Daniel J. Siegel (dan@danieljsiegel.com), principal of the Law Offices of Daniel J. Siegel, is a member of the Editorial Board of The Philadelphia Lawyer.
Cynics, lawyers all, have been heard to say, with the straightest of faces, that the only law learned in the hallowed halls of law school is the law a student learns in the halls; in other words, in more practical venues. That epigram is often expressed, “You don’t learn spit in the classroom; you learn it by practicing in the courtroom.”

Well, this old badger at the bar says, “It ain’t necessarily so,” and says it based not on anecdote but personal experience.

Not to put too fine a point on it, it took a while – 45 years to be exact – but I finally did make real good practical use of something I learned in law school; something I learned in my very first class on my very first day.

It’s a short enough story, so I’ll take a moment to set the stage.

Little Louie, originally Luigi, was a small, wiry, 60-ish man of Italian ancestry, who, after 40 years in this country, still spoke English with an accent heavy enough to convey that he was still more comfortable speaking in his native tongue. He had been referred to me by a fellow inmate in connection with his punitive confinement in administrative detention, aka “the hole,” based on an alleged infraction of the rules of the house; that is, the Federal Correctional Institution at Allenwood, to which he had already been transferred from Allenwood Prison Camp for some prior infraction there. To convey an accurate sense of the bizarre nature of his then current circumstance, consider the following scenario:

Louie’s initial offense was failure to pay some employment taxes incurred by his cement contracting company, for which he went to trial, was convicted by a jury, and sentenced to serve 51 months; a bad break indeed. He had served 33 months when matters went from bad to worse.

The offense that resulted in Louie’s transfer from the Camp to behind the wall was his alleged participation in assisting, or at least dummying-up for, a fellow inmate who managed to smuggle his semen to his visiting wife, who then transported it in an insulated container to her doctor waiting in a car outside the camp, where he inserted her husband’s bounty, impregnating her. When she gave birth in due course, her husband bragged about it, and word spread through the prison grapevine. The authorities got wind of it and punished him,
and his alleged co-conspirators, because no one was willing to inform how the deed was done; specifically, which prison personnel had been bribed to allow the “wannabe” dad (who had been celebrated in the press as “Sperm Boy” when word got out), to spill the beans as to exactly how the sowing of his seed had been accomplished.

So, Little Louie found himself transferred from the Camp to the FCI. And that was only his second bad break. The worst was yet to come, resulting in his transfer from general population to administrative segregation. The incident that triggered that additional punishment was his alleged misuse of his telephone privileges.

That disciplinary charge was based upon the translation of a statement Little Louie made to his own son on the prison telephone, all of which calls were overtly monitored. Speaking in Italian to his son about Louie’s younger brother, who had refused to post bail for his own son, who apparently had fallen into drug use and was not attending to the family business, what Louie said, was translated as follows:

“You tell my stupido brother, if I was there, I’d break his head with a two-by-four.”

That, according to the enthralled monitor, constituted a threat of violence, a violation of the institution’s rules that got Louie transferred from his dorm in general population to administrative segregation. And that was when Lou’s son, a pharmacist on Long Island, contacted me.

Since Louie was serving a “new law” sentence – one imposed for an offense committed after Nov. 1, 1987 – there was no question of parole. Parole had been abolished, so the only avenue for relief was to institute some action against the Bureau of Prisons, which generally required embarking on a tedious course of successive stages of administrative review, with little likelihood of completing the required “exhaustion of administrative memories,” before he completed service of his sentence. Administrative segregation entailed 23-hour days in a cell, with one hour in an individual yard, as well as suspension of visits and telephone privileges; in other words, in virtual solitary confinement.

I was uncertain how to get quickest access to a forum in which we were likely to gain relief. Time was a factor, so I decided not to wait but proceed to do something to at least put the ball in play. So, I read the BOP disciplinary rules, and, as the Brits used to say, the penny dropped.

Using bad language was not an offense for which an inmate could be sanctioned, unless directed at a corrections officer. The First Amendment, if not exactly flourishing behind prison walls, is still alive. So, cutting through the inflammatory reportage of Louie’s language in the charging document (the “shot,” in jailhouse argot) was the charge that he had threatened someone.

That’s when my law school education kicked in. I already had the answer; I had learned it 45 years earlier, on my first day, in my first class − Criminal Law 101. The answer was in the first case we ever studied, the first case in the “Cases in Criminal Law” textbook. Tuberville v. Savage, King’s Bench Division, 1 Mod.Rep.3, 86 Eng. Rep. 684 (1669).

Rather than risk reinventing the past through the prism of fallible memory, the relevant extracts from the administrative petition for relief I filed with the Bureau of Prisons read as follows:

From a legal standpoint, the statement did not constitute a threat because Inmate did not manifest an intention to actually commit any harm and was in no position to do so. Other portions of his statement, and the circumstances in which made, negate any intent to inflict harm, and render the statement mere verbiage.

Inmate’s words, as referenced by the disciplinary hearing officer (DHO), were replete with expressions of subjunctive or hypothetical intent rather than actual intent. The DHO quotes Inmate as saying he “would” take certain action. In the context in which spoken, that was not an expression of the intent to inflict actual harm. The statement is reminiscent of the classic law school textbook case in which the defendant was charged with an assault because he said, “If it were not Assize time, I would run you through with my sword.” The court held that the words spoken actually “unmade” the threat. Tuberville v. Savage, (1669), and acquitted the defendant.

Several days later, I was shocked to receive a telephone call from counsel at the Northeast Regional office of the Bureau of Prisons, congratulating me on my research skills and pithy (he actually said “pithy,” and he was not lisping) presentation of an argument based on so “venerable and hoary” (his words as well) precedent, which was sufficiently persuasive for his
office to suggest that, perhaps further punishment might be “gilding the lily” (yes, he said that too). In short, the matter would be terminated and my client returned to general population forthwith.

“Forsooth,” I replied, in kind. Louie was returned to general population where he continued to have problems based upon the continuing investigation of Sperm-Boy’s successful stab at becoming a father. Although indictments were in fact returned against others in that matter, including, of course, the new dad himself, no charges were ever brought against Little Louie.

At some later time, I actually came across a full exposition of the case, and was surprised to learn I had forgotten that the case involved a civil lawsuit, not a criminal prosecution; and that it was Tuberville, the plaintiff, who had uttered the conditional language (never actually mentioning his sword), which triggered a beating at the hands of Savage, whose defense to the suit for tortuous injury was that Tuberville had threatened him.

Against the possibility, however remote, that the reader is interested in the exact language employed by the court in awarding judgment for the plaintiff, the opinion follows:

Action of assault, battery, and wounding. The evidence to prove a provocation was that the plaintiff put his hand upon his sword and said, “If it were not assize-time, I would not take such language from you.” – The question was, If that were an assault? The court agreed that it was not; for the declaration of the plaintiff was, that he would not assault him, the judges being in town; and the intention as well as the act makes an assault. Therefore if one strike another upon the hand, or arm, or breast in discourse, it is no assault, there being no intention to assault; but if one, intending to assault, strike at another and miss him, this is an assault; so if he hold up his hand against another in a threatening manner and say nothing, it is an assault – in the principal case the plaintiff had judgment.

I have no doubt that the court’s opinion would sound like music if read in Louie’s native Italian, but remembering how those prosaic words brought Little Louie a measure of freedom, they were indeed sweet music to the eyes.

Steve LaCheen (slacheen@concentric.net), a partner with LaCheen, Wittels & Greenberg, is a member of the Editorial Board of The Philadelphia Lawyer.
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I saw Adolph Eichman at a bus stop in Berlin. I did not really see him, of course, because the Nazi head of the Judenreferat – the Department of Jewish Affairs – the man who planned and executed the murder of millions of European Jews was hanged more than 50 years ago for war crimes and crimes against humanity. What I did see were several large photos of him plastered to the windows of the bus stop.

Eichman is back in the news because there is a new book about him, “Eichman Before Jerusalem,” by Bettina Stangneth. Her book is seen as a response of sorts to a big book of a previous generation, Hannah Arendt’s portrait of him at his 1961 trial, “Eichmann in Jerusalem.” Arendt coined the famous phrase, “banality of evil” to describe and to try to understand Eichman. Over the years it supported a view that he was a bland bureaucrat following orders – terrible orders – from on high. Stangneth apparently sees it differently. She recognizes that there were indeed non-ideological functionaries, but Eichman was not one of them. She sees in him a passionate, unrepentant Nazi leader who was a planner and executor of the Holocaust, proud of his murderous accomplishments until the end, or at least to the end of his post-war freedom and the beginning of his trial at which he tried to portray himself as the faceless functionary who was “only following orders.”

One bus stop photo shows him in a drab suit that he wore during his 1961 trial in Jerusalem. He looked anything but banal in the other photo in which he was dressed in his snazzy Nazi uniform. I am not sure whether it was designed by Hugo Boss who did the uniforms for Hitler’s bodyguards and other SS members. Maybe it was done by a designer less known than Boss – a faceless functionary designer.

The paragraphs next to the bus stop photos note that Eichman had his headquarters on that site where a luxury hotel, the Hotel Sylter Hof, now sits. Before the hotel and before Eichman the “former stately house of the Jewish Brotherhood” was there. In large letters on top of words and pictures are the words:
“Never Forget.”

The Eichmann bus stop is not the only visible and dramatic Berlin marker of the Holocaust. There are many brass plaques embedded in front of buildings where Berlin Jews once lived before the Gestapo took them away. Each plaque is about the size of a cobblestone and it bears the name of a person deported to a concentration camp, the date taken, and the date and place of death, usually Auschwitz. Very few had death dates after 1945 because few Berlin Jews survived the camps and the war.

The plaques bear witness to murder and to stolen lives, ordinary and extraordinary lives. Berliners walk by them and over them to enter stores and to go upstairs to flats to have dinner with families and kiss children goodnight. Residents, customers and passers-by can choose to know about Jewish Berliners who once lived similar lives in the same places until the police came for them. The metal messages give silent powerful testimony 24 hours a day, seven days a week, on holidays and weekday in good weather and bad.

Some Berliners – I don’t know if it is 1 percent or 99 percent, but some – are working very hard to remember Berlin and Germany’s Nazi past and Nazi crimes. They are trying to ensure that Germans, and maybe the rest of the world as well, never forget. Such efforts, always important, may be even more important now given the resurgence of anti-Semitism in Europe, Germany included.

Thousands gathered at the Brandenburg Gate recently to demonstrate against harassment and attacks against Jews in Germany. The fighting in Gaza seems to have given an opening not just to those who might criticize and debate in good faith. It has also provided an opportunity for the haters to come out of the shadows.

German Chancellor Angela Merkel spoke at the demonstration. Addressing demonstrations is something she almost never does. She said there was no place in Germany for anti-Semitism, that it disgraces all Germans and it was every German’s duty to fight it.

Faulkner wrote, “The past is never dead. It’s not even past.”

The bus stop, the brass plaques, and the Chancellor carry the same message:

Never Forget.

Michael J. Carroll (mcarroll@clsphila.org), a public interest attorney, is a member of the Editorial Board of The Philadelphia Lawyer.
The cause is indisputably human activity, specifically, unrelenting emissions of carbon dioxide and other greenhouse gases caused by burning fossil fuels: oil, natural gas and coal. The United States for many years led the world in total annual greenhouse gas emissions, but it has been passed by China with India close behind. So we, as a world of people, must face the impending and probably existential problem of arresting climate change and preserving the biosphere.

Don’t take it from me. Take it from a scientist, Richard Alley, Ph.D., of Penn State University, who explained the scientific consensus on climate change at a Philadelphia Bar Association Chancellor’s Forum to a capacity crowd at bar headquarters on Nov. 6. Dr. Alley is a glaciologist who is widely credited with showing that the earth has experienced abrupt climate change in the past – and likely will again, based on his study of ice cores from Greenland and West Antarctica.

Dr. Alley is a member of the National Academy of Sciences and the Royal Society, and has worked with both organizations on published reports explaining the consensus on climate change. He served as one of the authors on the United Nations Intergovernmental Panel on Climate Change.
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People ask, why lawyers? Because the solution to climate change must be expressed in law. In fact, the problem in one sense can be said to have occurred because of a lack of legal restriction. But more, the problem is so important and urgent that it deserves the attention of our profession. We’ve done it before on other issues of great importance to us and our families, issues like independence, abolition of slavery and civil rights. Lawyers and the legal community played leading roles in all of those causes.

Change, whose members shared the 2007 Nobel Peace Prize. He has many other accomplishments in the area of climate science. He has been described as “a cross between Woody Allen and Carl Sagan” for his informative and entertaining teaching style.

Dr. Alley began his presentation with the “skinny version of the program,” which is that “we enjoy the good that we get from energy use, which is now primarily from fossil fuels. We must change or suffer really, really serious consequences and the sooner we start changing the better off we will be economically and in other ways. So you can now enjoy your dinner.”

The problem is the huge volume of carbon dioxide (CO2) we are now emitting into the atmosphere, many of us without realizing it, because CO2 is invisible. To illustrate the point, Dr. Alley asked the audience to compare the weight of household trash per person per year in America, which is less than 1,000 pounds, to the weight of CO2 put into the atmosphere per person per year in America, which is about 40,000 pounds. “This cannot continue,” he explained. “We are burning fossil fuels roughly a million times faster than nature saved them for us.”

The result is an unprecedented level of CO2 in the atmosphere. For 800,000 years CO2 levels ranged from 180 to 280 parts per million, and continued at the upper end of that range for the 8,000 years of human civilization. That number has risen since the Industrial Revolution, with most of that rise in recent decades, to 400 parts per million, a mark we just passed in 2013, and it is still rising.

The accompanying chart (see page 23) from the National Oceanic and Atmospheric Administration that shows the change in CO2 levels over time, more specifically, the spike in CO2 levels caused by burning fossil fuels.

CO2 blocks cooling, something science has known for a long time, and more CO2 will block more cooling of the Earth as it emits energy from the sun’s rays. This is why, when asked if he “believes in global warming,” Dr. Alley responds: “We don’t believe it. It’s physics. And it’s physics like if I drop this pencil it will fall down. There isn’t another side of that.”

Will global warming have adverse consequences? At this point it seems that there will be consequences no matter what, but unless CO2 emissions are reduced a lot more quickly it will cause serious changes for life on earth, including sea level rise imperiling the lives of many people around the world, not to mention food shortage and loss of biodiversity, to name just a few problems we can expect. Dr. Alley said that all of the uncertainties about climate change relate to the downside risk. As he put it when he spoke upon his election to the Royal Society this past summer: “we are doing a huge geochemical experiment in the world by putting CO2 up and the uncertainties about what it might do are mostly on the bad side.”

Many scientists, governments and the United Nations have concluded that we must reduce CO2 emissions quickly to limit further temperature increase to no more than another two degrees Celsius (3.6 degrees Fahrenheit), or face devastating consequences. The Intergovernmental Panel on Climate Change has advised that greenhouse gas emissions in 2050 will have to be 40 to 70 percent lower than what they were in 2010, and by the end of the century they will need to be at zero. Even then, we will have to consider yet unknown technology to take carbon dioxide out of the atmosphere.

Or face devastating consequences. This isn’t something that can easily be ignored. These are the findings and conclusions of the entire scientific community around the world developed for more than 25 years.

An international outcry for action on climate change grows louder every day, supported by the United Nations and many of the world’s governments, including countries with millions of people living near sea level who will have no place to go. Many religious leaders from all faiths have spoken out strongly. Pope Francis is said to be preparing an encyclical. The Rockefeller family is divesting its holdings in fossil fuels.

Much is being done to address or at least understand the problem. Scientists, economists and planners
around the world are studying it. The U.S. military is preparing contingency plans. The insurance industry is investing heavily in understanding the risk. The Environmental Protection Agency (EPA) issued proposed new regulations to reduce emissions from power plants. California is taking bold steps to reduce emissions.

On Sept. 21, the United Nations kicked off Climate Summit 2014 with more than 300,000 people marching in New York City. The Summit seeks to achieve an international accord designed to reduce emissions substantially, the hope never fulfilled in the Kyoto Protocol that in 1997 the U.S. Senate killed with a non-binding resolution on a 95-0 vote.

It seems obvious that substantial reduction and then elimination of greenhouse gas emissions should be an immediate policy goal of the United States and all other countries. Is this technologically and economically feasible? The answer is unequivocally yes, according to most economists including many well-known conservatives, such as Charles Schultz, Hank Paulson and Gregory Mankiw. Former George W. Bush Treasury Secretary Paulson had an excellent article on this subject in The New York Times on June 21, 2014. Economists generally agree that a carbon pricing policy, i.e., a carbon tax or cap and trade system, would limit emissions substantially while creating a free market revolution in new technologies, with substantial economic benefits. As Americans, we could take the lead politically, technologically and economically. The rest of the world would be forced to follow in order to compete.

What other choice do we have? Isn’t this the whole point of the American experiment – that a free people can lead themselves through a government designed to secure our future. There is no reason why we should reject our principles now and quietly give in to the loss of the natural world that we all depend upon for life. Instead we should use the authority that derives from the consent of the governed to make new laws that force a substantial reduction in CO2 emissions. Or face devastating consequences.

As a practical matter, meaningful carbon pricing cannot happen without the approval of the world’s most powerful legislative body, the U.S. Congress. Congress has done nothing on climate change since 1987, when it passed the Global Climate Protection Act, which directed the EPA to propose to Congress a “coordinated national policy on global climate change.” Congress then emphasized that “ongoing pollution and deforestation may be contributing now to an irreversible process” and that “[n]ecessary actions must be identified and implemented in time to protect the climate.” Since 1987, Congress has enacted no laws on climate change, and has not mandated a coordinated national policy. More recently, many legislators have declared their disbelief in climate change, presumably a reflection of the views of the voters in their districts or their campaign donors, and surely not a proper assessment of the scientific evidence.

Congress must act on climate change. This is too important to get it wrong for even a few more years. This cannot be decided as a partisan issue. It must be decided on the scientific
But Congress needs to be urged to act. That’s where we all come in. We need many more voices: fathers, mothers, teachers, nurses, athletes, fire fighters, astrophysicists, yoga instructors, CEOs and yes, lawyers.

People ask, why lawyers? Because the solution to climate change must be expressed in law. In fact, the problem in one sense can be said to have occurred because of a lack of legal restriction. But more, the problem is so important and urgent that it deserves the attention of our profession. We’ve done it before on other issues of great importance to us and our families, issues like independence, abolition of slavery and civil rights. Lawyers and the legal community played leading roles in all of those causes.

With the support of Chancellor William P. Fedullo, the Board of Governors of the Philadelphia Bar Association recently passed a resolution on climate change. The resolution calls on the U.S. Congress, the Pennsylvania General Assembly and local governments to promote policies, such as carbon pricing, to reduce the use of fossil fuels and greenhouse gas emissions. The full resolution can be found here: www.philadelphiabar.org/page/ResJune14_3.

The Philadelphia Bar Association is only the second bar association to speak out on climate change. In 2008, the American Bar Association passed a similar resolution.

Many people recognize climate change as the great moral and ethical issue of our time. As lawyers, it is right that we make our voices heard. The hope is that we can generate publicity about the resolution passed by our bar association, the nation’s oldest, so that other bar associations and other groups will join in the call for action.

We can also look for ways each one of us can work on this issue. With the help of people in the Philadelphia legal community, a new website has been launched: www.calltothebar.org. It’s a place where lawyers can show their support by signing an online petition, learning more about the issues, and getting involved.

Finally, we can and should encourage other bar associations and organizations of every kind to make it a first order of business to take a stance on climate change. That’s also part of the Philadelphia Bar Association resolution and the mission of calltothebar.org.

It’s hard to overstate the seriousness of the issues if we can believe Richard Alley and the reports from the science community. Do we believe them? As lawyers, particularly in Philadelphia, the birthplace of science in America, we know how to evaluate scientific evidence. Many of us have science backgrounds and many more have developed expertise in evaluating scientific claims and evidence. The answer to the question is clear, as is our obligation to call for Congress to take action now to protect society from the devastating consequences of climate change if CO2 levels don’t come down.

Steve Harvey (steve@steveharveylaw.com) is principal in Steve Harvey Law LLC.
BERNARD W. SMALLEY: You’ve spoken fondly about your grandfather and his role as a community leader. How did his role in the community form your view on the role of lawyers in the community?

ALBERT S. DANDRIDGE III: My grandfather, Albert S. Dandridge Sr., was the first African-American health inspector in the City of Philadelphia. He obtained that position in the late 1930s. His territory encompassed the bulk of the bars and restaurants in Philadelphia. He knew everyone. He was also a Republican committeeman and ward chair for more than 50 years.

When I was a small child, before we lived across the alleyway from each other, I lived across the alleyway in a home that my grandparents owned. I would go over to visit him and my grandmother almost every day. He loved baseball, and probably because of Jackie Robinson, he loved the Dodgers. We would sit and watch baseball together on television. In all the years that I knew my grandfather, I could probably count on one hand the times that I saw him without a suit and tie. He was always on duty. He lived in a row house in West Philadelphia that had an enclosed front porch. This was his office. Several times during the evening the doorbell would ring and my grandfather would go out onto the porch to answer the door. He would sit down with the person or persons on the couch and chairs on the porch. Sometimes, sitting in his living room I would overhear the conversations. The people who came to the door were from all walks of life, and all races and ethnic groups: Irish-Catholic, Italian-American, Jewish-American, Armenians and, of course, African-Americans. Their stories would all fit into a pattern:

“Mr. Dandridge, I lost my job.”
“Mr. Dandridge, I cannot make my rent this month.”
“Mr. Dandridge, I have a problem down at City Hall.”
“Mr. Dandridge, my son is in trouble.”
“Mr. Dandridge, my daughter is in trouble.”

I never heard anyone call him by his first name, except my grandmother. It was always Mr. Dandridge. However, my siblings and I, and all of the kids in the neighborhood, called him “Pop.” If you were under 21, you called him “Pop.” If you were over 21, you called him “Mr. Dandridge.”

I would listen to him help those people who came to visit him on the porch with their problems. I would also see him reach into his own pocket to help. My grandmother wanted to move to a bigger house in a fancy neighborhood. He refused. “These are my people, they need my help. This is where they know to find me,” he would tell her. This, more than anything, taught me early on the meaning of service to your community.

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tours in Vietnam. Let’s talk about your military background and how your experiences as a Marine have shaped you.

I joined the Marine Corps right after graduating from high school. My best friend and I were acolytes together at the historic African Episcopal Church of St. Thomas. Since I could remember, he wanted to be a Marine. I did not. He wanted me to join the Marines with him. I did not want to do so. We flipped a coin, I lost.

As you know, the Marine boot camp at Parris Island is located in South Carolina. This was the first time I had ever been in the Deep South. We were the only two African-Americans in our training platoon of about 90 recruits. He got hurt and had to spend two weeks in the hospital and joined another training platoon. So when we were separated, it was just me. I had never before had the “N-word” directed at me by someone who was white. This changed. To give you an example, I did not have the best dental care when I was young. In boot camp, I had to have extensive dental work done and the dentist there saved and restored the teeth that were bad. He did not pull a single tooth. Since all Marines are trained for combat, the dentists were all Navy officers. The dentist that worked on my teeth was a Navy lieutenant commander who had to be in his late 50s or early 60s. When I was sitting in the chair, with his instruments in my mouth, as part of casual conversation with the other dentists – we were lined up as if in barber chairs – he would use the “N-word” every other word. He talked about how he loved to work on “N-word” teeth. Being alone, 17, and a buck private, there was not too much I could do about it. However, to this day, I have had dentists tell me that this was the finest work they have ever seen. There is a moral to this story somewhere. However, I got along. I could run further and faster than most of my peers, I could kick a lot of their butts, and I was smarter than they were. They accepted me. The Southern recruits could not believe that I was black because I broke all of the stereotypes that they had been taught all of their lives. My drill instructors were hard on me, but they were hard on everyone. However, they were fair to me; I knew they wanted me to succeed. Once I became a Marine, I was part of the club – case closed.

The Marine Corps taught me that most people have biases that can be overcome. They taught me that if you treat people fairly, they will generally reciprocate.

After serving overseas for the first time, and becoming a very young sergeant, the older African-American Marines, the “Montford Point” Marines – the segregated boot camp in North Carolina for black Marines during World War II – would take me under their wings and school me. This was a fiercely loyal and decidedly patriotic group of men. Most of them had fought in three wars. Once they found out that I had the “right stuff” they taught me about what being a Marine and what being a “black man” was all about. Service to the other Marines, and service to God, our country and community, was a large part of that.

You are known for your honesty and candor. How would you describe your leadership style? How does your military background play a role with how you lead people?

I tend to be very open and direct with people. I have found that I generally do not have the time, nor the inclination to do anything else. I believe it does come...
I care about our community, the Bar Association and members of the bench and bar. I want to be in the room to make sure “bad stuff” does not happen to any of them.

from the Marine Corps. I have found out in combat that those who you think should have the correct answers don’t always have them. In combat, bad information or lack of information gets people killed. Therefore, my style is to tell everyone what is going on so that they have as much information as possible. I have found that the correct answer can come from many sources. So I seek input from everyone involved. To give a military analogy, I may have to say, “we have to take this hill.” I am not going to tell you how to take the hill. It may not be a frontal assault, it may be we sneak up on them in the middle of the night. You tell me how we should do it, it’s your rear end on the line.

Al, you have such an impressive record of service to the larger community and the Bar Association, at this point in your career, why was it important for you to become Chancellor?

As you and I discussed many years ago, I like to be in the room when “stuff” can happen to people. I care about our community, the Bar Association and members of the bench and bar. I want to be in the room to make sure “bad stuff” does not happen to any of them.

Your legal career spans 36 years and you’ve been a member of the Bar Association for 31 years, what differences have you seen in the profession and the association? What’s better? What’s different?

I, like so many others, believe that the practice of law is becoming more of a business than a profession. But I also believe that that tension has been around for a while. It is a complicated issue that has no simple answer. I do not think there is the same camaraderie amongst our members, nor the legal profession as a whole, the way there used to be, because we do not know each other like we used to. I believe that part of the reason was that many years ago, the bar and Bar Association used to be populated by men who stayed in their ethnic and practice silos. Today, the bench, bar, our practices and the Bar Association are much more diverse. This
is a good thing. We are making strides in the inclusion of all races, genders and cultures. We are reaching across the world to share positive solutions to problems and issues that affect other bar associations and the world community, not just our Bar Association and city. But, we could be doing more and we could be doing more to foster collective endeavors. We do need to get to know each other better and to join together to serve the common good. We used to do that in the more closed bar, we now need to do this in a more inclusive environment.

You are currently a partner and chief diversity officer at Schnader Harrison Segal & Lewis LLP, and you are one of the founding members of the Philadelphia Diversity Law Group (PDLG). How would you rate Philadelphia law firms on their respective diversity efforts? Do you think firms should abandon diversity committees and the like? How do you plan to
further the Bar Association’s diversity efforts initiated by former Chancellor A. Michael Pratt?

Quite frankly, we have not done a good job at all. Philadelphia habitually ranks near the bottom of major cities in its diversity efforts. We tend to do a good job at recruiting diverse students – at least in the large firms – but we do not do a very good job at retaining them. Every firm is willing to hire the editor-in-chief of the law review, magna cum laude graduate of Harvard Law School. But not every person of color is Barack Obama. However, we have come a long way – a person of color with those exact credentials could not get hired in hardly any major Philadelphia law firm 65 years ago.

We have to come up with better ways to retain attorneys of color, especially women. The PDLG law firms have had a tremendous record in recruiting talent of color, but they, like everyone else have struggled to keep talented attorneys of color. At the end of the day, to me, it comes down to a very simple question. Are the majority firms and businesses willing to mentor and train diverse attorneys so that they can entrust major matters to them?

No, I do not think firms should abandon diversity committees. Someone needs to be the beacon for the right thing to do. Years ago, this concept was built into the DNA of many firms. I am not sure it is there anymore. Yes, I believe the Bar Association’s Office of Diversity started by Mike Pratt, is still very important. That office is an important resource to all firms that are trying to do better with diversity and inclusion. I believe that one of the missions of the Bar Association and its Office of Diversity is to assist lawyers and firms in doing things that they cannot do for themselves.

What role does the Bar Association play in the practice of today’s lawyer?

As I said, I believe one of the missions of a Bar Association is to do for the bench and the bar what they may be unable to do for themselves. I believe the overriding mission is to make lawyers proud that they are lawyers.

What tradition do you think should be restored to today’s legal practice?

A tradition of service to our community. Firms that encourage their attorneys to participate in the Bar Association support the entire city, not just the legal community.

What is on your agenda for the upcoming year?

I have outlined some of them above:
• Service to our community
• Enhancing the opportunities of attorneys who are women of color
• Service to our veterans.

How will you know that your term as Chancellor has been a success? What do you hope is your legacy?

That when people walk up to me and tell me “thank you,” then I will know that I made a difference.

Bernard W. Smalley Sr. (bsmalley@tlgattorneys.com) is senior counsel to the Tucker Law Group, LLC.
After nearly 10 years of sitting behind a desk, it was time for me to stretch my legs. I had enjoyed the past decade, spent as an associate at a Philadelphia-based law firm and later at an insurance company, but the weeks, then months, then years, were passing by with a sneaky speed and invariability. In March of this year, my girlfriend, sensing a growing unease in me, off-handedly mentioned the Appalachian Trail (AT). I knew very little about the AT and even less about camping, but the idea of hiking from Georgia to Maine somehow lodged itself in the front of my brain. Without thinking about it too deeply, I started to determine if it was feasible to leave my life in Philadelphia and live in the woods for a while. Three weeks, $2,000 in gear, a lease agreement with some quickly found tenants, and a one-way plane ticket later, I was at the Hiker Hostel in Dahlonega, Ga., wondering what I had gotten myself into.
There were about 20 other hikers at the hostel that first night, all planning to thru-hike the AT (i.e., hike the entire trail within a 12-month period), and all of whom had read multiple books on the AT and spent months, sometimes years, doing meticulous research and preparing their bodies to hike 2,185 miles over rough terrain. I had prepared by reading about half of “A Walk in the Woods” by Bill Bryson – a great story, but one essentially about the author failing to thru-hike the AT. On April 16, the Hiker Hostel van dropped us off about one mile below Springer Mountain, the start (or terminus, if hiking south) of the AT. I spent that mile on the phone with the CEO of the company I had just left, disconnecting about 100 yards from the top and starting the trail with no preparation, outdoorsmanship, income or home. But merely making it to the start felt like an accomplishment; I had never felt better.

On the first evening, I melted my camping stove, the directions failing to mention that I should avoid placing the stove’s detachable plastic plate directly on the isobutene flame. On the sixth evening, I figured out how to pitch my tent, which had collapsed on me during the previous five nights. (If you’ve never had a tent collapse on you in the middle of the night, you’re lucky. It feels like you’re being buried alive, at least to this author, who doesn’t even like elevators.) After a couple of weeks, I was making edible dinners, sleeping like a baby, and hiking 20 miles each day. I was amazed how fast I got used to living out of my 30-pound pack, and I was lucky to come across very early what was a constant truth during my time on the trail: people on and around the AT want to help. (Many thru-hikers prefer the more mystical version that “the trail provides.”)

One of the greatest things about the AT is not the trail itself, but the people who work hard to keep it, and the hikers, in working order (they are known as trail angels). There is not enough room here to discuss all of the generosity (trail magic) I came across, but it’s safe to say that very few people, myself included, would finish the AT without it. When you’re out of food and the nearest town is 20 miles away, you need to come across someone who’s willing to pick up a dirty, smelly, bearded hiker from the side of the road and take them into town.
As such, hitchhiking becomes an art form for a thru-hiker, and the people of the trail towns along the AT look for hikers to pick up as part of their summertime routine, similar to the way drivers in New England learn to look for frost heaves in the winter. On a quiet stretch of Route 26 in Unicoi, Tenn., a driving instructor, in the middle of a lesson, saw me standing at a road crossing and had her student pull over to give me a ride to the nearest convenience store for resupply. The poor 15-year-old kid with his hands glazed at 10 and 2 didn’t know what to make of the whole thing. Possibly the oddest trail magic I received was in Dalton, Mass., to which I hiked for 25 miles on a bum foot and in a cold rain in order to get to town and sleep in a dry place, only to find that the one motel in town was booked. Just then, a ponytailed guy in a white van pulled up and asked me if I need a place to stay. I said I did. I was in luck, he explained, because he had a bed in his van. I said OK, which gives you an idea of a thru-hiker’s desperation. It turned out that this trail angel also had access to a camper, there were a few beds in it, and my initial fears proved unfounded.

There were as many reasons for hiking the trail as there were hikers, but people generally fell into one or more of the following categories – recent retirees; recent college graduates; 30-something professionals either between jobs or taking leaves of absence from their job; endurance athletes/ultra-hikers; ex-military guys; and people hiking the trail to lose weight. Probably more than 80 percent of the thru-hikers started alone, and fewer than 20 percent of people who start the AT intending to thru-hike actually complete it. Surprisingly, it was the recent college graduates, the demographic physically most suited to long-distance hiking, who had the highest dropout rate (perhaps along with the weight-loss hopefuls). Thus, it became clear early on that this was less a test of physical endurance than of the mind’s ability to stay focused on a task for an extended period of time, organize each day efficiently, and stick to your checkpoints. I had the tremendous advantage of having practiced law.

I also benefitted from hiking much of the AT with some of the most fascinating people I have ever met. Guy “Astro Guy” Gardner was a fighter pilot in Vietnam, an Air Force test pilot, a NASA space shuttle pilot for two missions, and then program director of the joint U.S.-Russia Mir program. He retired and followed his lifelong dream of becoming a physics teacher. Celeste “Acorn” Beyer was an ex-sponsored snowboarder who went on to counsel and treat drug addicts by spending time with them in the mountains of Vermont. Only toward the end of the hike did I learn I had been hiking with someone famous (by AT standards) for being the “toughest woman on the trail.”

Most people I would meet in passing, and we would spend the day exchanging stories and appreciating each other’s quirks. There were hundreds, including “Rocky,” a laid-back dude who arguably managed to pull off both Willie Nelson braids and a kilt, and who always had two cars parked about 15 miles apart. He would hike 15 miles south from Car A to Car B, drive Car B 30 miles north, hiked 15 miles south to Car A, then repeated. I passed him a number of times going the opposite direction – in effect, he hiked south from Georgia to Maine, almost never having to camp outside. Another was “Fig Leaf,” an American who spoke Spanish, but only to her dog, which she bought in Nicaragua and which presumably had trouble understanding English.

The hike itself took just over four months. In that time, I went through six pairs of socks, five pairs of hiking shoes, four pairs of trekking poles, four hiking shirts, two pairs of hiking shorts and two backpacks. I saw five bears, one moose, one rattlesnake, one copperhead and the eyes, at night, of one wild boar. But the most dangerous animal I saw on the AT was also the smallest: the nymph-stage deer tick, carrier of Lyme disease. I hiked with four people who contracted Lyme disease during their thru-hike. I ate more than 30 pounds of peanut butter, 20 pounds of tuna and 600 tortillas. I covered more distance than the distance, as the crow flies, between New York City and Las Vegas, climbed and descended more than 515,000 feet, and took more than 4 million steps.

Was it worth the time, energy, money and gap in my resume? My answer is unequivocally “yes.” I do not yet know the full extent of what the trail taught me, but I know I gained the ability to separate complexity from fullness of experience, and to slow myself down to a speed where the compartments of my life could gel. It had become too easy for me to load myself up with work and constantly juggle dozens of tasks, the busier the better. Time pressures still existed on the AT – to pack up and start hiking early, to hike a certain number of miles to meet someone, to get to town on a certain day before I ran out of food – but if I simply kept putting one foot in front of the other, 4 million times, I would get to my goal.

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A MARATHONER FOR ONE YEAR

By Matthew Weinstein

As a runner in elementary school, junior high and high school (competing in sprints, cross country and, my favorite event, the long jump), I was always intrigued by the marathon, but it was not until college that my piqued interest led to any type of action. As a freshman (in August no less) I decided I wanted to run the New York City Marathon. Unfortunately the race was closed for that year. Sophomore year I got mono and abandoned training. Junior year I never even bothered trying. I started training for two weeks as a senior but quickly lost interest.

For two years in New York City as a paralegal, I ran “sprint” distances. Five- and 10-kilometer races were as far as I dared go. I was young. I enjoyed the speed. I still had a chance to break personal bests.

The law school years were dark times. My first and second years were physical atrocities. I was in terrible shape and anything over four miles was not even a consideration. But in my third year, I amazingly had some free time even though our first child arrived. I took up long-distance running and actually ran the Broad Street Run in Philadelphia for the first time. It was 98 degrees that day, and though I was in good shape, the heat took its toll. I finished in 1 hour, 23 minutes. Even the elite runners had difficulty that day.

But that was it for eight years. I never went further than six miles for eight years. I still ran for pleasure (I made sure to run the Philadelphia Bar Association 5K every year). Some years I was in good shape, some years I was not. I finished those 5K runs in the 21-minute range several times and had some 24-minute days as well. Cycling became a larger part of my life during that time. I rode indoors in the winter on my stationary bike in the basement and on my low-end hybrid in the summer. I never missed an American Cancer Ride City to Shore ride for nearly seven years.

But in late 2008, things changed. As a real estate attorney, I saw the professional world around me crumbling. Bear Stearns and Lehman collapsed. LandAmerica, a title industry giant, vanished. The capital markets simply shut down. Work dried up fast and I found myself home for dinner regularly on weeknights.

So, I decided to start running again. I had some free time and I wanted to get in good shape for the 2009 Bar 5K in May. By March 2009, however, my former law firm had closed its doors and I needed a real distraction and a new goal. So I decided to kick my training up a notch and start training for the November 2009 Philadelphia Marathon which was scheduled the day before my 36th birthday. I’d either give myself a birthday gift of a marathon or die trying.

And so I started training. The goal was to get in good enough shape by mid July that I could start training. The marathon, as I found out, was different than any other athletic endeavor I ever trained for in the past. I bicycle, ski, run, walk, hike, climb mountains, river raft and do all sorts of other events involving some degree of stamina but never had experienced what the marathon had to offer.

The first thing I found out was that I needed new clothes. Mesh shorts, cotton shirts and cotton socks were great for any distance less than six miles, but anything more with that type of clothing caused all sorts of skin issues (blisters, chafing, etc). The winter months also required more than cotton sweats which got very wet and then very cold. I had to invest in the right gear.

Then there was the time commitment. When you train for a 5K, there is not much to it for a relatively athletic individual. You run three to four miles a day four or five times a week and you are going to be fine. That doesn’t cut it for the marathon. Marathon training is a full-time job. You have to run at least 35 to 45 miles per week if you plan to finish the race. In addition, you have to run at least five days a week and one of those has to be a long run. Long, especially in the real marathon training months, means 15 to 20 miles on a Sunday morning.

This is a lifestyle change. If you are an average marathoner who runs 8- to 10-minute miles, that means that your average weekday run will last between 45 and 75 minutes. Add in changing, stretching and showering and that is almost two hours a day, four days a week. The Sunday long run lasts two to three hours, which means you cannot really go out on
Saturday night (and if you do, you certainly are not drinking). You need to make sure your weekdays have two-hour blocks of time to work out for a four-month period and you need to make sure you get enough sleep.

Oh, and you need to get your work done.

For me, the real estate market was in shambles, little work was occurring and I had some free time, so naturally, I decided to run a marathon. Most of the training was solitary weeknight runs – five- and seven-mile runs in the dark (and sometimes rain) by myself. What I looked forward to the most were the Sunday runs. I found a wonderful group that did the long runs together. The group consisted of doctors, lawyers, dentists, business people, grandparents, parents and most importantly, folks that were my speed.

But about 10 days before the marathon, I got a pain in my left hip. I figured it would go away. It did not. The Thursday before the marathon I was noticeably limping. I tried to run and could not. Most folks told me I should not run for fear of major injury. My brother-in-law said if I ran I wouldn’t walk properly for three months (he was right). But I ran anyway. After several Advil and some deep penetrating Ben-Gay I was at the start line… still limping.

I figured I would try to run and if I couldn’t take the pain, I would head back at the half marathon. The first five miles were sheer agony. I was way off my pace and the pain in my leg was searing. But then around mile six or so, Mayor Nutter gave me a high five and my leg started loosening up. By mile eight, I was back on pace and running fairly comfortably. By the half marathon I decided to go for it. By the time I hit the Manayunk grade, my high school heel injury had resurfaced (probably from the limping during the first five miles), one of my toenails felt like it was going to fall off and I hit my own personal wall at about mile 18. I knew my wife and girls were at mile 20 so I had that as a goal. I decided to walk through the water stops and properly rehydrate and eat. That ended up being my saving grace.

By the time I hit mile 20, I had pressed through the wall and though I was running slowly, I knew I would finish. With tears in my eyes I came running around the Philadelphia Art Museum. At 4 hours, 37 seconds, I crossed the finish line.

I walked with a limp for the next three months. I could not put full pressure on my leg for six weeks after the race and did not start running until two months after the race. And when I did start, I suffered a minor foot injury. By March 2010, one year after I started training in earnest for marathon number one, I was training for marathon number 2, the Philadelphia Marathon.

I guess my heart was not in it the second time around. I wanted to do the marathon twice, but between the injury (in retrospect I never fully healed when I started back and that hurt my runs during the first few months) and some increased workload over the summer and particularly in September, I could not stay on my training schedule.

I did run the Philly half marathon in November 2010 with a personal best of 1 hour, 49 minutes. I had actually run faster in a training session for the marathon a year earlier but that time wasn’t official. And so ended my quest as a marathoner for one year.

I look at my year of training as one of the most fulfilling of my life. I rediscovered my love of running and felt like I was aging in reverse.

For all those lawyers out there, the marathon is doable even with our schedules (and certainly the half marathon is achievable). What is most important is to run, have fun and enjoy.

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Part III further examines the logical and practical challenges Supreme Court decisions on the spread of voter ID laws. Constitutions. Part III then analyzes the impact of recent laws and reviews recent cases determining their constitutionality. Several courts reviewing these laws have found them to be unconstitutional. Very few courts reviewing these laws could not obtain the photo identification necessary to comply with Pennsylvania’s newly passed voter identification law. “[F]or the first time in decades,” Applewhite feared that she would be unable to vote.

The right to vote in a republican system of government is held in high regard. As the United States Supreme Court has stated, voting “in a free and unimpaired manner is preservative of other basic civil and political rights,” and in order to protect this important right, “any alleged infringement . . . must be carefully and meticulously scrutinized.” That is because “voting is of the most fundamental significance under our constitutional structure.”

From senior citizens like Applewhite to college students, voter identification (voter ID) laws pose a significant obstacle to citizens exercising their right to vote. Voter ID laws can take many forms and have differing levels of strictness. However, at their most basic, they are laws passed at the state level that require potential voters to present some form of state issued photo identification in order to exercise their right to vote.

There are relatively few justifications for voter ID laws: most center on protecting the legitimacy of the electoral process and stopping voting related fraud. Yet the issue with voter ID laws is that they – either intentionally or unintentionally – restrict the right of some citizens to vote. Emerging research on the practical impact of voter ID laws demonstrates that these laws are not only actually decreasing voter turnout generally, but also decreasing turnout in particular demographics. With these competing interests in mind, numerous state legislatures have decided to pass and enforce voter ID laws. Very few courts reviewing these laws have found them to be unconstitutional.

This essay examines those voter ID laws and analyzes their impact on the voting public. Part II provides a background on voter ID laws and reviews recent cases determining their constitutionality. Part III then analyzes the impact of recent Supreme Court decisions on the spread of voter ID laws. Part III further examines the logical and practical challenges posed by voter ID laws, concluding that definitive judicial action would be necessary to slow the spread of these laws.

States are allowed the power to regulate elections pursuant to the Tenth Amendment to the Constitution, as “[e]ach state has the power to prescribe the qualifications of its officers, and the manner in which they shall be chosen . . . .” Certain limits have been placed on that power to regulate, including in 1965, when Congress passed the Voting Rights Act (VRA). The VRA was designed to address disproportionate voting rates along racial lines. It prohibits discrimination in voting administration, and the Act subjected specific jurisdictions with a history of racial discrimination to heightened scrutiny when changing their voting laws. In the words of the United States Supreme Court, the VRA constituted “a drastic departure from basic principles of federalism” through its unequal treatment of the states. While the VRA passed an initial facial challenge regarding its constitutionality, states have continued to challenge the Act’s validity.

In the past five years, states “have enacted a plethora of laws” aimed at restricting citizens’ right to vote, most notably through voter ID laws. Research has shown that voter ID laws have a real, negative impact on voter turnout. In fact, one recent empirical study estimated their impact to be between 1.6 percent and 2.2 percent in a given election. While that impact may seem small in isolation, applied across the country, voter ID laws either prohibit or deter some 3 million to 4.5 million potential voters from voting, even in just a mid-term election. Research has also shown that racial minorities are disproportionately affected by voter ID laws, and some have argued that the laws amount to nothing more than a recharacterization of clearly unconstitutional literacy tests. With this impact in mind, citizens and interest groups alike have undertaken lawsuits to enjoin the enforcement of and ultimately overrule voter ID laws. This section highlights both state and federal judicial decisions related to those challenges.
recently, at the memorial service for Robert Kendall, a longtime Philadelphia lawyer, I recalled an act of discrimination against women on the part of the Marriott Hotel in the summer of 1970, which was resolved with Bob’s help. It’s difficult to believe that it was not so long ago in the scheme of things, and that even today women suffer such affronts on a daily basis.

My good friend Pat Kendall and I were shopping in Saks Fifth Avenue on City Line Avenue that morning, and decided to have lunch at the Marriott nearby. Standing in line to get a table, we heard the maitre d’ tell two men in front of us there would be a 15-minute wait for a table, but they could sit at the bar while waiting. We stepped up, gave our names and said we wanted a table for two and would wait at the bar. “I am sorry,” said the maitre d’, “unescorted women cannot be served at the bar.” We demanded to know why and were simply told it was Marriott’s policy. Needless to say, we left without waiting for a table.

When I informed my husband of what happened, he said he understood why Marriott had such a policy. It was most likely to keep the bar from becoming a place to pick up a prostitute. I decided my husband was not sufficiently enlightened, so I called Pat’s husband, Bob, who helped me draft a letter to the Marriott. He suggested we have another attorney sign the letter, saying that in our opinion Marriott’s policy was a violation of the Pennsylvania Human Rights Act. The Marriott promptly responded, explaining the reasons for its policy, the principal one being to protect unescorted women from the “unwelcome advances of well-intentioned businessmen and conventioneers” and to preserve the “family atmosphere” of

NOTHING LIKE A DAME
By Dona Kahn
the bar. After an exchange of several letters, drafted by me with Bob’s help, we received a letter in July 1970, from the Marriott’s attorney who, after referring to the original incident as a “misunderstanding,” informed us that the hotel realized that it “must keep up with the times,” and that any previous policy that would have inhibited my freedom to circulate through all the facilities of the hotel was no longer in effect. The use of the word “misunderstanding” was certainly a mischaracterization. Marriott understood full well that women not escorted by men were being perceived as possible prostitutes and clearly were not welcome at its hotels.

The policy of the hotel was changed nationwide and a footnote to this incident is somewhat amusing. At that time I was a trial attorney for the Department of Agriculture.

I tried antitrust and unfair trade practice cases against companies and others in the livestock industry. Periodically I traveled to other parts of the country to try a case. In the fall of 1970, I went to Atlanta and after spending a long day preparing witnesses, we went to the Marriott for dinner. One of the witnesses told us his brother-in-law was the manager of the Windjammer Lounge at the hotel and we would get VIP treatment. We were indeed treated well (drinks on the house) and when I noted to the manager that it seemed to be a popular place to dine, he replied, “Oh, yes, it has really been hopping for the last few months. Some dames in Philadelphia opened up the bar to women and we are now packed every night.” I decided not to volunteer that I was one of those “dames.”

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The days in which a lawyer would leave her office and have minimal contact with staff and clients until she returned are long gone. With the advent of smartphones and other technology, lawyers are able to, and in many cases need to, stay in touch with clients, other attorneys and their offices at any time and from virtually anywhere. But in order to do so, they need the right technology.

There are a few points to consider generally. First, the goal is to utilize tools that make you most efficient. That means that another attorney’s essential item may not be so important to you. Second, mobile technology takes up space, and may be heavy, so you have to decide what to carry in the limited room you have. Third, because we all have budgets, your purchases must balance the size and weight of the items against the power and cost for their size and weight. In other words, a giant laptop may be desirable, but it may be too heavy or bulky for your circumstances. With those caveats, let’s take a look at essential technology for lawyers on the go.

**SMARTPHONES**

Mobile lawyers need to own a smartphone and, in fact, the American Bar Association says 91 percent of attorneys have abandoned traditional cell phones and now own a smartphone. These devices are essentially mini-computers with Internet access, the ability to read and edit documents, cameras that can also serve as scanners, and other features that make them more powerful than laptops were just a few years ago. There are three different operating smartphone systems – iOS (for iPhones), Android and Windows – with each having benefits and weaknesses, although most attorneys use iPhones or Android-based phones. One of the most important things to consider is not the phone itself, but the wireless provider, because these devices are only as good as the networks they are on. So if you happen to live in an area where one company’s coverage is weak, you should consider a competitor.

**INTERNET ACCESS**

You need Internet access to get the most from your smartphones, laptops and tablets. While Wi-Fi (free or fee-based Internet access offered everywhere from law firms to hotels to Starbucks) is an option in many locations, it also means that you will often be accessing a public network and could be exposed to hackers and others who might view confidential client data or other personal information.

As a result, I recommend purchasing a hotspot, i.e., a portable device sold by most cell phone services, including Verizon and AT&T, which provides wireless Internet access to many devices (usually five to 10). Typically, providers charge a monthly fee for the devices based on the amount of data used. For example, you might pay $25 per month for 3 GB of data, which means that you
For years, lawyers relied on laptop computers when they left the office. With the introduction of the iPad, the first successfully marketed tablet, a second alternative emerged. But there remain differences between the two devices.

PORTABLE STORAGE AND BACKUPS
Laptops and tablets tend to be fragile. In either case, you will be well served by having backup systems in place – to either carry your data, or as an emergency backup should the device break. These devices can be particularly helpful because many tablets, including iPads, have limited internal storage, and you may need to carry more data than they can hold. These drives, sold just about everywhere, can store more information than most of us will ever need for any given case.

Fortunately, portable external hard drives are relatively inexpensive, with a 1 terabyte drive (which will hold more data than most of us will ever need) costing under $100. When you have one, you can back up your tablet or laptop, or have a separate device in your office can use when working on the case outside of the office.

SCANNERS
In recent years, lawyers have begun to use their laptops and tablets as scanners because of the devices’ built-in cameras. While using the camera feature is practical for one- or two-page documents, it is slow and cumbersome to do so with larger documents. In that situation, you should consider acquiring a portable scanner that can either connect to your device through a wired or wireless service. A number of companies offer high-quality mobile scanners, many of which weigh only a few ounces and operate on batteries.

PRINTERS
If you need to print multipage documents, it may be economical to travel with a portable printer, many of which can connect to your devices wirelessly. However, these devices are often heavy, and you have to balance the convenience of portability against the amount of data included per month.

LAPTOPS OR TABLETS
For years, lawyers relied on laptop computers when they left the office. With the introduction of the iPad, the first successfully marketed tablet, a second alternative emerged. But there remain differences between the two devices.

Laptop computers have an attached keyboard, whereas most tablets either have only an on-screen virtual keyboard or permit users to link to a portable keyboard. In addition, laptops are generally heavier than tablets, but can run most common software programs, such as Microsoft Office. On the other hand, tablets are lighter and run apps (except for Windows-based tablets that run traditional software), which commonly have fewer features and less power than laptops. In addition, laptops often have more built-in storage space, which means that if you store a lot of files (or are using a tablet for trial) or photos or videos, you may need to have external, portable hard drive.

If you are primarily reading or reviewing information, then a tablet is a good solution. On the other hand, if you will need to use a keyboard extensively, such as for revising documents, you will probably be better served with a laptop.

Todays smartphones also operate as hotspots, doing so generally uses up the device’s battery power quickly. On the other hand, mobile hotspots have far better battery life; they commonly use mobile broadband service from cellular providers for 3G or 4G Internet access, and are often priced based upon the amount of data included per month.

While having a hotspot is an increased cost, it is generally worth the investment. For years, lawyers relied on laptop computers when they left the office. With the introduction of the iPad, the first successfully marketed tablet, a second alternative emerged. But there remain differences between the two devices.

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the cost of visiting a hotel business center and paying the per-page cost for printing. In general, using a portable printer makes sense if you anticipate printing one or more large documents.

**PROJECTORS**
The size and price of portable projectors has dropped dramatically in recent years. But if you are making a presentation, or going to trial, having your own projector can be invaluable, especially when you consider the consequences that could arise if the court’s equipment either doesn’t work or in the rare situation when is not compatible with your device.

**OTHER STUFF**
Don’t forget all of the other things that are essential, like extension cords, chargers, dongles (that’s the name of the connector that connects a tablet like an iPad to a projector or other device), charging stations (to allow you to charge one or more devices in one place), and plenty of extra batteries (most of these devices use AA or AAA batteries). You may also want to bring along a remote control to use with your presentation so that you aren’t tethered to a keyboard or stuck with a remote that’s difficult to use.

In addition, you may want to travel with a spare smartphone battery because losing phone access could be a major problem. Having a backup battery or one of the mini-charges now flooding the market can keep your phone alive until you arrive at a location where you can plug in the device’s charger. The size and price of portable projectors has dropped dramatically in recent years.

Lawyers have become road warriors. In doing so, they need to be sure that they have all the right tools to accomplish their needs. After all, if you are about to make a presentation, you don’t want to discover that the batteries in the remote control for your PowerPoint are dead and that you are stuck on the first slide.

Daniel J. Siegel, (dan@danieljsiegel.com), the principal of the Law Offices of Daniel J. Siegel, is a member of the Editorial Board of The Philadelphia Lawyer.
THE MOBILE OFFICE HAS BECOME EVEN MORE PORTABLE. Now you can scan documents without being tethered to your desktop computer. The Doxie Go Wi-Fi is small, cordless and offers Wi-Fi connectivity. Visioneer’s Mobility scanner lets users scan to smartphones (except for iPhones), SD cards or USB flash drives with no need for a computer.

<table>
<thead>
<tr>
<th>FEATURES</th>
<th>DOXIE GO WI-FI</th>
<th>VISIONEER MOBILITY</th>
</tr>
</thead>
<tbody>
<tr>
<td>MAXIMUM OPTICAL RESOLUTION</td>
<td>600 DPI</td>
<td>300 DPI</td>
</tr>
<tr>
<td>MAXIMUM SCAN AREA</td>
<td>8.5” X 15’’</td>
<td>8.5” X 14”</td>
</tr>
<tr>
<td>FILE FORMAT SUPPORT</td>
<td>JPG, PDF, PNG</td>
<td>JPG, PDF</td>
</tr>
<tr>
<td>SCANS PER BATTERY CHARGE</td>
<td>300 PAGES</td>
<td>300 PAGES</td>
</tr>
<tr>
<td>SCAN SPEED</td>
<td>10 SECONDS PER PAGE</td>
<td>10 SECONDS PER PAGE</td>
</tr>
<tr>
<td>DIMENSIONS</td>
<td>10.5” X 1.7” X 2.2”</td>
<td>11.5” X 2.75” X 2”</td>
</tr>
<tr>
<td>WEIGHT</td>
<td>15.3 OUNCES</td>
<td>22.5 OUNCES</td>
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When first together on the national stage 14 years ago, uber-lawyers David Boies and Ted Olson were on opposite sides of the “v” in *Bush v. Gore*. The “s”election of George W. Bush by the United States Supreme Court was not the only peculiar thing to come out of that debacle. This odd couple, the Dream Team of Boies and Olson, was born in that corrupt cauldron of counts, re-counts and butterfly ballots.

Olson and Boies come from different ends of the political spectrum, but are now colleagues and genuine friends, in large part due to collaboration on their successful challenge to California’s Proposition 8, the state constitutional amendment passed in 2008 (52 percent to 48 percent) preventing gay marriage in The Golden State.

Their literary joint effort about that case is an excellent and fascinating tale of a major and noble pro bono victory by generous activists and two mega law firms that helped thousands directly and millions indirectly. But, let us not forget for a moment that these two legendary litigators cut their teeth and line their pockets representing scores of corporate masters against the interests of many more millions.

Ted and David’s excellent adventure takes the reader from the birth of this important and high-profile case in the Hollywood home of liberal activists, Mr. and Mrs. Rob Reiner, to the hallowed halls of the U.S. Supreme Court more than four years later. “Meathead” from “All in the Family” and his wife, embarrassed and depressed that their state had taken such a profound and backward step in history, led and helped finance the effort.

As a litigator, what struck this reviewer was the classic mega-firm way of litigation – “spare no expense or resource,” “if you can do it, you must do it” and “always plan for and expect massive discovery, multiple experts, trial and multiple appeals.” While questioning the strategy and tactics of any victorious counsel, much less these two legendary brothers in arms, is risky, at best, it is disturbing, yet unsurprising, that at no point do they seem to have seriously considered a much more focused attack on the heart, nay the Achilles’ Heel of their opponent’s case.

First, they really did not have an opponent. Technically, the governor, then Arnold Schwarzenegger (“The Governor”) was the defendant since the challenge was to a state constitutional amendment. Wisely, Republican Schwarzenegger, like Democrat Obama, eventually came to support marriage equality and refused to defend. Attorney General Jerry Brown, later and now governor, likewise refused and went further formally opposing the Amendment in court.

Rather than press for default and unopposed decision on the legal merits, the Dream Team, hoping to make this a cause celebre with as much national educational as legal value, decided not even to oppose the intervention by a well-financed, though rag-tag and odd group which had proposed and advocated for the passage of Proposition 8.

District Court Chief Judge Vaughn R. Walker, a known, but not publicly gay man involved in an unmarried, long-term relationship, granted the intervenors’ motion and the battle, such as it was, was joined.

Second, the opponents faced an uphill battle on the law, the facts and the comparative resources and talents of the teams. While few cases have their Perry Mason moments where opposing counsel makes a damning concession, where key witnesses drop out of sight due to fear of looking foolish or liars, where key “expert” witnesses recant and support their opponent, or where an opponent has absolutely no evidence whatsoever to support the key point in its case, this case had them all, and then some.

Not all, but many cases have what I call one “Why in the world?” question, to which one must have a reasonable response under law supported by actual evidence in order to win. In this case, that was simply, “Why in the world would permitting gay marriage threaten or harm heterosexual marriage, children or society?”

Boies and Olson nominally praise their opposing counsel, Charles “Chuck” Cooper as a “preeminent trial and
appellate lawyer,” but Cooper, at oral argument on his motion for summary judgment (Boies and Olsen filed none), in what they call, and rightly so, “one of the most memorable and decisive moments in the case,” when asked what harm would be caused, said, “I don’t know. I don’t know.” (p. 85-86) Wow! If plaintiffs had not filed a motion for summary judgment yet, then would have been the time to do so.

The balance of the book (212 pages) is anticlimactic as the authors foreshadow, “In the end, neither he nor his trial witnesses nor his colleagues knew of any harm that would result from allowing same-sex couples to have the same right to marry that opposite-sex couples enjoyed.”

The opponents were not exactly Paper Tigers and the result was not preordained, but these straw men eventually fell at every level, including the U.S. Supreme Court. The ultimate irony was that the court let stand the lower court’s ruling that the Proposition 8 Amendment was unconstitutional because the intervenors did not have standing. Proof positive that a procedural ruling on standing can be used to do the right thing, 157 years after the court used the same device to do an awful thing in Dred Scott.

Lastly, the touching stories of the carefully selected same-sex couple plaintiffs and their desire to marry will bring a tear to the eye of all but the most hardhearted. Though they represented the interests of some 18,000 California same-sex couples who had married before Proposition 8 passed, and thousands of others who wished to do so, their individual, personal love stories speak so much more than the thousands of pages of legal briefs and transcripts.

No one, however, seems to have made the comedian’s point that since opponents of gay marriage are really against gay sex, they would more likely get the results they wanted by letting gay couples get married.

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Law Week “Stylish Appeal” Charity Fashion Show, May 3, 1995

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I don’t remember much about the day that my dad came home from the hospital after his accident. We all do it. I do not think my dad had been home since then.

Thank you for persevering and not giving up on my dad’s case. Because of you, my dad pays his bills. But of all he can let his body heal. Thank you doesn’t say enough. Our lives will be forever better because you became a part.

God bless you Mr. Duffy and Merry Christmas to you and your family.

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