

AT ISSUE

A PUBLICATION BY AND FOR THE YOUNG LAWYERS DIVISION
OF THE PENNSYLVANIA BAR ASSOCIATION

MUDDIED WRITING CAN CAUSE YOU PROBLEMS

By Professor Louis Sirico

Suppose that you represent the plaintiff bank in a mortgage foreclosure and the judge asks you to submit a proposed order outlining the current amount of indebtedness. You draft that order and submit it to the judge. The judge issues a decree granting your client a summary judgment and an order directing the sale of the defendant's property. You are pleased and mail a copy of the order to your client. But then you notice a footnote in the court's order. It states: "The proposed document [what you submitted to the court] was quite problematic both in style and content. After considerable editing, the court has omitted much legalese while including the basic information plaintiff's counsel proposed as necessary." Oh, the embarrassment! And will the bank ever hire you again?

Perhaps you thought that all the talk about writing in clear English was merely a question of aesthetics and did not actually have any real-life consequences. After all, lawyers and judges will read anything. While the bank's lawyer in this case likely agreed with that opinion, he was wrong. *Community South Bank v. Quip Industries, Inc.*, 2998 U.S. Dist. LEXIS 59531 (S.D. Ill. 2008).

Writing in clear English can help you, and writing in unclear English can have unfortunate consequences. These consequences of legalese should present no surprise. Consider professor Joseph Kimble's definition of "legalese": "a form of prose so jumbled, dense, verbose and overloaded that it confuses and frustrates most everyday readers and even many lawyers." (Kimble, *Lifting the Fog of Legalese* xii Carolina Academic Press 2006).

In this article, we review some cases in which unclear writing created serious problems. These cases caution lawyers to write clearly, to be precise in their drafting and to be careful with punctuation. Being charitable, I am using illustrations from cases that did not arise in Pennsylvania.



Avoid Creating Confusion

The Unreadable Regulation. Consider this regulation from the U.S. Department of Justice:

"When a filing is prescribed to be filed with more than one of the foregoing, the filing shall be deemed filed as of the day the last one actually receives the same."

What does this regulation declare? We might have a better idea of what the Justice Department is stating if it had written its regulation this way:

"A filing occurs when all parties who must receive the filing receive it."

See http://lawsagna.typepad.com/lawsagna/2007/06/confusing_legal.html.

If the drafter thinks about how the reader will understand the sentence, the drafter has a better chance of effectively communicating with the reader.

The Wordy Deed. In this case, the grantee bought a tract of land with a roadway crossing it. The deed contained this clause:

"[The land conveyed contains] three and one-half acres of land, more or less, excepting and reserving from the above described premises a roadway 16.50 feet wide as now located across the premises from east to west."

The grantor now claims that he owns the roadway in fee simple while the plaintiff grantee claims that the grantor has retained only an easement.

The problem lies with the phrase "excepting and reserving." The drafter may have thought the phrase was merely repetitive in an old-fashioned lawyerly way. However, in the world of property law, "excepting" indicates a fee simple, and "reserving" indicates an easement. The court applied the familiar canon of construction that construes ambiguous phrasing against the grantor and declared that the grantor held only an easement. *Campbell v. Johnson*, 622 N.E.2d 717 (Ohio App. 2d Dist. 1993).

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CASTING A WIDER 'NET' WHY YOUNG LAWYERS ARE EMBRACING SOCIAL NETWORKING SITES LIKE NEVER BEFORE

By Scott P. Sigman

Facebook, LinkedIn, MySpace, Plaxo. The Internet is full of online social and business networking sites. Many of Pennsylvania's young lawyers are already members. Some are thinking of joining, while others stay away. The real question, though, is whether these sites provide young lawyers with a good opportunity to network, gain business and advertise themselves.

From the beginning of modern lawyering in Pennsylvania, lawyers have used Martindale, the Yellow Pages, Pennsylvania Super Lawyers and Pennsylvania Rising Star Super Lawyers, among other means, to advertise, promote themselves and gain business. All of these sources have one thing in common: They cost money, and lots of it.

So what are young lawyers to do? The Internet age, which some say has spelled the death of Martindale's famous (high-priced) lawyer listings, has provided a totally free resource that has more readers, subscribers and daily viewers than Martindale, Pennsylvania Super Lawyers and the Yellow Pages combined. Online social and business networking sites (including Facebook, MySpace, LinkedIn, Plaxo, Friendster, Spoke and Avvo) are now supplanting most other methods of traditional networking for young lawyers, who are vexed by stringent billable hour requirements and find it increasingly difficult to leave their offices for meet-and-greet opportunities.

Lawyers can sign up for free and design a page to market themselves to the general public. These pages can (and should) include current contact information, a biography similar to the one that would appear on a firm's Web site, news clippings, notable case mentions and even photos, as long as these photos help to promote the lawyer. Such photos may include the lawyer with notable clients, politicians, public figures, celebrities, etc. Photos should not include pictures of the lawyer drinking or engaging in unprofessional conduct.

Scott P. Sigman of Bochetto & Lentz, P.C., is the chairperson of the Philadelphia Bar Association Young Lawyers Division and an at-large Zone chair for the PBA YLD. He may be reached at ssigman@bochettoand-lentz.com or (215) 735-3900.

Here are a few reasons why you should sign up now:

1. *Cost/Target Audience* — It's free, and a site like Facebook or LinkedIn has more daily viewers in Philadelphia and in the entire world than any form of paid advertising.

2. *Google Listing* — What most lawyers do not realize is that when a potential client "Googles" a lawyer's name, a listing on a site such as Facebook or LinkedIn will appear at the top of that ever-important Google listing without any cost. Clients are always interested in reading up on a prospective attorney.



3. *Job Change* — If you change your job, location and/or contact information, people will still be able to find you. When you are listed on LinkedIn or Facebook, for example, the search is by name. If you change or update your contact information, all of your Facebook or LinkedIn contacts will be notified of the change free of charge. If someone misplaces your number or you switch jobs, there is no need to worry; you can be found easily.

With a carefully tailored Web page on some (if not all) of these online sites, you really expand your opportunities to network with other lawyers and professionals, or connect with old friends and classmates. Once old friends and classmates learn what you have been up to and know how to contact you, they will. This can lead to a significant increase in your book of business. It really is a win-win scenario for the young lawyer. It's a

At Issue

Editor

Livinia Natasha Oluwoló

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way to increase your clients, increase your business and increase your network of friends and business professionals, all at no cost. When your information changes or you have something notable to report, such as a case reported in the newspaper, a free notification can be sent out to your network of contacts. Currently, along with the many young lawyers who are on these sites, there are managing partners from Pennsylvania law firms, former Pennsylvania Supreme Court justices, authors, doctors, politicians and many of your past friends and classmates just waiting for you to sign up and connect with them.

The business is out there, but are you willing to take the step and create your own Web page on these online sites? It's free and you have nothing to lose.

MUDDIED WRITING CAN CAUSE YOU PROBLEMS

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Be Precise

Inattention to detail can result in imprecision and ultimately in litigation. Consider these two cases dealing with real estate deeds:

The Devilish Deed. The original owner deeded property to the plaintiff, but reserved a one-half interest in oil, gas, and mineral rights. The plaintiff then deeded the property to the defendant and included this provision:

"The grantor herein hereby reserves a one-half interest in oil, gas, and mineral rights reserved. ..."

The issue: Did the plaintiff pass on to the defendant one-half of all the oil, gas and mineral rights in the property or did the plaintiff pass on only one-quarter of those rights? The Alabama Supreme Court found in defendant's favor, but excluded all extrinsic evidence in construing the deed. *Cole v. Minor*, 518 So. 2d 61 (Alabama 1987). Still, could a different court find for the plaintiff?

The Landscaping Litigation. In this case, the purchaser of a house agreed to this deed covenant:

"Once construction is started on the within described lot ... all landscaping shall be completed within two years from commencement of construction."

The reader might expect litigation to center around how to determine when construction starts — when the engineer's planning begins, when the builder lays the foundation or when the builder begins to put up the above-ground structure. Or the reader might note the passive voice and wonder which party is responsible for the landscaping. However, in this case, the issue was what constituted "landscaping."

Here, all the purchaser did during the two years was to scrape off the land 800 cubic feet of loam and then sell 500 cubic feet of it. He reserved the rest to improve the grade on part of his property. Did the purchaser engage in landscaping? The court declared that the deed provision lacked clarity even in the context of the surrounding facts and declined to hold that the purchaser had violated it. *Vittum v. Oak Ridge Builders, Inc.*, 2006 WL 627173 (Me. Super. 2006).

Professor Louis Sirico teaches at Villanova University School of Law and is a member of the PBA Plain English Committee.

Watch Your Punctuation

Even an absent or misplaced comma can cause serious mischief. Here are two examples:

The Missing Serial Comma. Consider a will in which the mother devises property "to Manny, Moe and Jack." Do the three brothers share the bequest in equal shares, or does Manny get half and do Moe and Jack each get one-quarter? In the actual case, Manny was 12 years older than Moe and Jack, and his mother had earned most of her wealth before the second two brothers were born. According to a survey conducted by professor Terri LeClercq, most judges would divide the bequest into three equal parts. But you cannot predict what your specific judge would decide. The message: Use serial commas.

The Misplaced Comma. At stake in this case was more than two million dollars. Rogers Communications, a Canadian Company, contracted with Aliant, Inc. to string cable lines across thousands of miles of the Maritime provinces. The contract stated:

"This agreement shall be effective from the date it is made and shall continue in force for a period of five years

from the date it is made, and thereafter for successive five-year terms, unless and until terminated by one year prior notice in writing by either party."

Aliant attempted to terminate the contract by giving notice during the first five-year period. Rogers objected, arguing that neither party could terminate during the first five-year period. The case turned on the comma after the word "terms." Did the comma indicate that either party could terminate with one year's prior notice at any time, as opposed to only after the first five-year term?

Canada's telecommunications commission decided that the answer was yes and held for Aliant. On appeal, the commission found for Rogers, but only by relying on an interpretation of the French version of the contract. *Telecom Decision, Canadian Radio-television and Communications Commission* 2007-75 (Aug. 20, 2007).

All these frightening tales suggest the same two lessons. First, be careful to consider all the ways that others could read your words differently than you intended. Second, write in a precise, plain English style and forgo the legalese of an earlier generation.

DON'T MISS THE
YLD SUMMER
MEETING
AUGUST 7-8
SEVEN SPRINGS RESORT

VISIT THE PBA WEB SITE
(WWW.PABAR.ORG) FOR UPDATES!

IMPROVING JUDICIAL ACCOUNTABILITY IN AN AGE OF MISCONDUCT

By Jacob R. Lauser

At some point in their careers, most young lawyers will hear complaints about judges basing their decisions on their own conceptualizations of justice rather than settled law. This practice may seem appropriate where the law fails to speak in an area, but where it conflicts with due process and fairness it is generally frowned upon. Courts are viewed as interpreters of law, not makers of it. Consequently, judges are bound by certain codes of behavior. Still, some do stray. Severe cases of judicial misconduct are usually ferreted out by the appeals process, but only for those who can afford an appeal. Others may find themselves at the mercy of a bad judge.

In March 2005, Robert M. Restaino, a Niagara Falls City Court judge in New York, infamously jailed 46 people after a two-hour tirade over a ringing cell phone in his courtroom. His excuse? "Certain stresses in his personal life." That November, the New York State Commission on Judicial Conduct voted to remove him from the bench, a decision that was appealed and affirmed last June. However, commission Chairman Raoul L. Felder voted only to censure Restaino. His fellow commissioners and the Court of Appeals thankfully disagreed. *In Re Restaino*, 10 N.Y.3d 577 (2008). Yet, despite the removal of Restaino from the bench, he is still listed online as a New York registered attorney in good standing. Furthermore, a fair number of his colleagues opposed his removal, as evidenced by the brief of amicus curiae submitted by the Niagara County Public Defender's Office and the Niagara County Conflicts Defender's Office during his appeal.

In another sordid case, Judge James M. Shull of the 30th Judicial District of Virginia thought nothing of deciding child custody issues with the flip of a coin. He also forced one woman to drop her pants — twice — in open court. Shull argued "that his action was intended to encourage the litigants to resolve the custody issues by themselves and to 'demonstrate ... that his award of custody ... would be as random as a coin toss.'" *Judicial Inquiry and Review Com'n*

of Virginia v. Shull, 274 Va. 657, 664 (2007). Shull argued that the pants-dropping incident was necessary to determine the facts of the case. Twice. The Supreme Court of Virginia concluded that random coin tosses were not in the best interests of children and that keeping one's pants on in court was a matter of personal dignity: "Judge Shull violated the Canons by his conduct because his actions failed to uphold the integrity and independence of the judiciary, and tended to impair public confidence in the integrity and impartiality of the judiciary." *Id.* at 674. Based on this determination, Shull was removed from the bench.

Notably, Shull had appeared before the Virginia Judicial Inquiry and Review Commission in 2004 for similar offenses against "the dignity of the judicial process," but those complaints were dismissed offhand because he was an inex-

Trial attorneys often swap stories over lunch about the antics of one judge or another, but for some reason states are reluctant to act.

perienced judge still learning the ropes. *Id.* at 676. A telephone call to the Virginia Bar revealed that Shull is still "active and in good standing, with no record of public discipline."

Trial attorneys often swap stories over lunch about the antics of one judge or another, but for some reason states are reluctant to act. In its *Shull* decision, the Virginia Supreme Court acknowledged that since 1971, only one other judge had been removed from office for misconduct. Nationwide, complaints are dismissed or overlooked and complainants are left with little recourse. Even when they are disciplined, bad judges are permitted to return to private practice with only a slap on the wrist — sometimes with their pensions and reputations fully intact. These incidents of judicial misconduct are replayed every day in courts across the country. To its greater detriment, the judicial system does little to punish any but the most egregious offenders, and they are hardly punished at all.

In a 1985 declaration titled "Basic Principles on the Independence of the

Judiciary," the United Nations presciently suggested, "A charge or complaint made against a judge in his/her judicial and professional capacity shall be processed expeditiously and fairly under an appropriate procedure." Today, private citizens and nonprofits across the nation are proffering their own ideas for expeditious and fair procedures to improve judicial accountability and punish offenders. One notable organization, the nonprofit legal reform group HALT (Help Abolish Legal Tyranny), is "dedicated to providing simple, affordable, accountable justice for all," and views judicial accountability as a crucial first step in accomplishing those goals. HALT Senior Counsel Suzanne M. Blonder recently admonished, "While most judges serve capably from the bench, our systems for judicial accountability unfortunately allow others to regularly abuse their positions of power. Weak conduct codes permit state and federal judges to rule even when they have a critical conflict of interest in a case. Judicial discipline commissions regularly turn a blind eye to misconduct by making it difficult for citizens to file complaints against judges, concealing data and ultimately refusing to remove or meaningfully sanction even the most incompetent and abusive judges."

In its "2008 Judicial Accountability Report Card," HALT lamented that only a few states seemed motivated to confront these problems and proposed seven specific areas needing improvement: (1) transparency; (2) availability of meaningful sanctions; (3) consumer friendliness; (4) online outreach; (5) public participation; (6) financial disclosure and (7) gift restrictions. Addressing these areas is the key to improving judicial accountability and preventing the sorts of misconduct outlined above.

HALT is not alone in its assessment. Citizens themselves are speaking out, and states are taking notice. In California, the Commission on Judicial Performance is leading a movement to curb rampant abuses perpetuated by judges in the civil, criminal and family law courts. In August, the Kansas Commission on Judicial Performance unveiled its own brand of judicial

Jacob R. Lauser is a third-year law student at the Appalachian School of Law located in Grundy, Va.

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WHAT I LEARNED FROM A MENTOR

By Timothy S. Burns

One of the goals of the PBA Young Lawyers Division is to promote and foster mentoring between seasoned attorneys and those younger attorneys attempting to make a name for themselves in our profession. I for one can attest to the positive impact that a mentor can have on one's legal career: I was taken under the wing of an experienced Johnstown litigator who capped his nearly 50-year legal career as a Cambria County Court of Common Pleas judge.

It was nearly five years ago that, due to a twist of fate, I crossed paths with then-attorney James DiFrancesco. He had recently retired as Cambria County's chief public defender and had opened a small part-time private office next to the courthouse in Ebensburg. At the same time, I was a judicial law clerk for a very distinguished Cambria County judge, Thomas A. Swope Jr., who was nearing retirement.

DiFrancesco needed assistance in writing his briefs and petitions, and I needed to start focusing on my post-judicial law clerk days. As a result, I started to do work for DiFrancesco, and as it turned out, we really clicked as a team. Thereafter, in a major turn of events, DiFrancesco was appointed to replace Judge Swope until a replacement was elected. With this judicial elevation, I took over DiFrancesco's practice and began to build my own. When Judge DiFrancesco's appointment concluded, he decided to retire from the practice of law. As a result, his law office suddenly became *my* law office.

Not expecting to have a law practice at a young age, I was nervous about succeeding — especially in an area with a difficult economic climate and very few young attorneys. However, thanks to Judge DiFrancesco's continued advice and guidance, I have built a very successful law practice in a short period of time. That success is largely due to the various points of wisdom about the practice of law that he continues to give me.

Timothy S. Burns is a sole practitioner in Ebensburg, Cambria County and chairperson-elect of the PBA YLD.

“The case is never about you; it's always about your client.”

One of the first bits of wisdom that Judge DiFrancesco instilled in me is that you should never put your personal ambitions in front of the interests of your client. There are times at which I think all attorneys want to impress the court and upstage opposing counsel or get that interview on TV. However, when it comes down to it, your job is to represent your client and his/her best interests. Sometimes representing your client's best interests is accomplished through a quiet settlement or through a last minute resolution on the day of trial. We all like to show the court that we have prepared, but by reaching a resolu-



Cambria County Judge James R. DiFrancesco on the day of his swearing in, July 1, 2005.

tion, however quietly, you accomplish your client's goals. If you are a good attorney, you will get the attention you deserve; until then, remember that the case is always about your client, not you.

“My father taught me that you should always treat all clients equally, regardless of race, creed. ...”

Judge DiFrancesco's father was a first generation Italian-American who was a very successful, flamboyant trial attorney in Johnstown — he even served a term as Cambria County District Attorney. Many times when Judge DiFrancesco discussed the practice of law, he would quote his late father. One bit of advice that really stuck with me is that we should treat all clients with the same level of profession-

alism and advocacy regardless of who they are. Whether your client is a court-appointed or a private client is inconsequential; they are entitled to the same level of representation. Remember, justice is blind. If you base your level of representation on the amount of dollars you may be able to generate from a client, then you have lost sight of your role as an attorney and your client is being denied the representation he or she deserves.

“Never criticize an attorney to a nonattorney.”

When Judge DiFrancesco first told me this, I questioned the reasoning. However, after a few short years in practice,

I realized the wisdom of this principle. The practice of law is a sacred fraternity that needs to be policed by its own members. While there are a few members in our profession whose ethics we may question, I believe the vast majority of our members are ethical and competent advocates for their clients. In all likelihood, there will come a day when a client comes into your office and bashes his or her former attorney, who may very well be an ethical and competent person. On the other hand, that client's prior attorney could be one of those individuals whom you wonder, due to their lack of ethics, how they still continue to practice.

Whatever the reason, real or perceived, the client is not happy with this attorney.

In any event, do not criticize that attorney. Some clients are never satisfied, and that “incompetent” attorney of theirs could very well be *you* who did the best you could. When someone criticizes their former attorney to me, I tend to justify their actions, but respectfully offer an alternative strategy that could have been taken. At other times, I agree with the prior counsel's course of conduct if it was appropriate. Be honest. I am not saying to defend an attorney who has violated our code of ethics. If that is the accusation, you have a duty to confront that prior attorney. However, as

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WHAT I LEARNED FROM A MENTOR

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stated, do not criticize that individual to the former client because you could do harm to all of us.

“Never put yourself in a position in which you could lose your legal license.”

More and more, it seems we read about attorneys who commit some act — unethical or even criminal — that could cause them to lose their legal licenses. That’s such a tragedy given all the hard work it takes to become an attorney. Judge DiFrancesco was adamant about maintaining ethical conduct in the practice of law. He was right. There are so many temptations facing attorneys today. An IOLTA account with \$5,000, \$10,000 or hundreds of thousands of dollars can be tempting if you need a few extra dollars to pay for a trip or a new car.

Whether we want to admit it or not, we as attorneys are held to a higher standard in the eyes of the public when it comes to personal conduct and ethics. How many times do you read about a doctor or accountant who gets a DUI? When attorneys break the law or commit unethical conduct, it is newsworthy because we have a solemn obligation to uphold the law, not break it. Furthermore, criminal conduct and unethical conduct, like “borrowing” from your IOLTA account, could cause you to lose your license. Likewise, temptations such as taking that extra drink or shot at a party are simply not worth it. If you have a problem, seek help. If you know a colleague who may have a problem, approach him or her about it.

tations such as taking that extra drink or shot at a party are simply not worth it. If you have a problem, seek help. If you know a colleague who may have a problem, approach him or her about it.

“At some point in your career, you should take a young attorney under your wing.”

This last bit of advice speaks for itself. Judge DiFrancesco learned the ways of the law back when attorneys had to serve an apprenticeship under an experienced attorney. He served his apprenticeship with his father in the early 1960s. Judge DiFrancesco’s father learned the law from Frank Barnhart of Johnstown, who served as a Cambria County judge in the 1920s. When Judge Barnhart was in his 80s, Judge DiFrancesco’s father invited him to join his law office on a part-time basis. Judge DiFrancesco often commented that it was Judge Barnhart (“Barney”) who taught him how to conduct legal research.

Reflecting on Judge DiFrancesco’s guidance, it struck me that many of the pointers he gave me were learned from attorneys and judges who were admitted to practice law in the late 1800s. Likewise, Judge DiFrancesco continues to share insights he learned from his father, an Italian immigrant, who became a gifted litigator and was a close friend of the late Justice John Musmanno, a noted jurist whose writings I still quote in legal

briefs. I have realized that the path to success in the practice of law is achieved not so much by what we learn in law school; it’s what we learn from our predecessors in this profession that makes the practice of law so special. Ours is a profession, not merely a job. Always remember why you chose to become an attorney, and in time, take a younger attorney under your wing and pass on what you have learned. If you feel that passion for the profession that I do, you will be rewarded.

Epilogue:

“I had an interview today. ...”

I could probably write a treatise on what I learned from Judge DiFrancesco, but that will be for another time. In any event, nearly two years ago I received a phone call from then-retired Judge DiFrancesco. He proceeded to tell me that he had an interview in Blair County that day to replace the retired Chief Public Defender. Less than a week later, Judge DiFrancesco, now in his 70s, was named Blair County’s Chief Public Defender. The judge pledged to work for 10 years — putting him into his 80s if he decides to retire then. (I doubt it.) The Blair County courts and, in particular, its young attorneys are grateful for his continued service. As for me, I am using the guidance received from Judge DiFrancesco to continue my own success in Cambria County.

YLD HOLDS ‘WELCOME TO THE BAR’ EVENT, CARAVAN

By Lisa Woodburn

The PBA Young Lawyers Division, in conjunction with the Pennsylvania Bar Institute, sponsored its first PBI “Welcome to the Bar” event. There were three concurrent events being held in PBI’s Philadelphia, Mechanicsburg and Pittsburgh locations. The programs included comments from keynote speakers, who were all from the Pennsylvania Supreme Court: Justice Jane Cutler Greenspan in Philadelphia, Justice J. Michael Eakin in Mechanicsburg, and Justice Max Baer and Justice Debra Todd in Pittsburgh. There was also a YLD representative who spoke about the YLD at each location. The PBA/YLD set up a welcome table and greeted the attendees. New admittees from 2006, 2007 and 2008 were invited. The hope is to make this event an annual fall event. Attendance in all three locations was good, considering the inclement weather at all three locations! Hors d’oeuvres, wine and beer accompanied the presentations. A gift from both the PBI and the PBA/YLD was given to attendees.

The YLD also sponsored a wine tasting on Sept. 12, 2008, as a Zone 3 Caravan. The wine tasting was held in conjunction with the Dauphin County Bar Association at the association’s headquarters. This was the county’s 8th annual wine tasting program. This year’s theme featured wine and pizza. A variety of wines paired with different pizza toppings, including meats, cheeses, vegetables and dessert pizza, were featured. Speakers from the Pennsylvania Wine Society included past presidents Bill and Lynne Beeson, as well as current board member Brett Woodburn. The wine tasting was well attended by both the YLD executive council and local young lawyers.

Lisa M.B. Woodburn of Angino & Rovner P.C. is the ABA/YLD District Representative.

YLD LAUNCHES 'WILLS FOR HEROES' PROGRAM

The PBA Young Lawyers Division has launched its "Wills for Heroes" program, designed to provide Pennsylvania's police, fire and emergency medical personnel with free legal services for development of wills and other estate planning documents. The project is co-sponsored by the Philadelphia law firm of Ballard Spahr Andrews & Ingersoll L.L.P., which has designated Wills for Heroes as one of its public service projects.

The kickoff event took place Feb. 21 in Philadelphia, with YLD Chair Ryan Blazure, PBA Immediate Past President Andrew F. Susko and Daniel J.T. McKenna, a YLD member implementing the "Wills for Heroes" program in Pennsylvania, in attendance.

"The real heroes in our communities are those who respond to emergencies and who put their lives in danger to protect the safety of others," said Blazure. "It gives us great professional satisfaction as lawyers to know that we are taking action to provide peace of mind to first responders."

Without a will, state law determines who receives what property from an estate and loved ones are faced with tedious paperwork and difficult decisions, program organizers said. Legal fees for preparing a will and other estate planning documents often run \$1,000 or more.

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At the kickoff event, from left: Daniel J.T. McKenna; Dan McCaffrey, candidate for Philadelphia district attorney; PBA Immediate Past President Andrew F. Susko; Joseph C. Waters Jr.; YLD Chair Ryan Blazure; PBA Secretary Charles Eppolito III; Supreme Court of Pennsylvania Justice Seamus McCaffery; and PBA President C. Dale McClain.

IMPROVING JUDICIAL ACCOUNTABILITY

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accountability in the form of online "Judge Evaluations" that rank judges' performance to "enable voters to make informed decisions about continuing appointed judges and justices in office and protect[ing] judicial independence."

Pennsylvania has also been working for better judicial accountability in the commonwealth and has taken positive action to ensure fairer representation on the complaint review board. The Judicial Conduct Board of Pennsylvania is a group of 12 volunteers (three judges, three lawyers and six nonlawyers) who serve four-year terms; half of them are appointed by the Pennsylvania Supreme Court and the governor appoints the other half. Additionally, "no more than half of the appointed board members may be from the same political party." This structure helps ensure objectivity and fairness in reviewing complaints and was applauded by HALT as a good means of representing the interests of lay persons within the commonwealth. The Pennsylvania Board has also stepped up its investigations of complaints against judges, and it recently elected new officers to help further its goals of "preserving the honor, dignity, independence, and integrity of Pennsylvania's judiciary." However, more still needs to be done.

HALT ranked the "State of Independence" third in the nation, behind Washington and Connecticut, citing a lack of meaningful sanctions and transparency as two major concerns about the Pennsylvania complaint process. The organization suggested, "To successfully deter judges from abusing their positions of power and to provide citizens with access to a judge's complete disciplinary history, all sanctions must be formal and public. A judicial conduct commission should have the authority to publicly censure, reprimand, fine, suspend and remove disreputable judges." This means ending secretive review practices and bringing the entire process further into the public eye, perhaps as Washington State has done by compiling the only searchable, public database in the nation that provides a comprehensive record of judges' disciplinary histories.

Lax gift restrictions in Pennsylvania also pose a problem. HALT cautioned that "Corporations and special interests often use expense paid trips to lavish settings in a thinly-veiled attempt to lobby judges. Rigorous ethics rules would place monetary caps on the reimbursements and compensation that judges may accept from private groups, but unfortunately most state and federal rules continue to permit members of the judiciary

to accept these gifts with few limitations." Just as it is important to balance political representation on the Judicial Conduct Board, it is also important to restrict the previously unfettered access corporations and economic interests have had to our judiciary. While financial disclosures and restrictions on honoraria for judges are good, they are not good enough. To help guarantee the political neutrality of justice, Pennsylvania must place meaningful limitations on the reimbursements and compensation that judges may accept in connection with corporate and special interest funded trips.

Ultimately, it must be understood that the opinions of organizations like HALT are only a starting point for reform; without willing advocates, these so-called "report cards" are mere advisory opinions. As officers of the court, young lawyers in Pennsylvania should take greater initiative in improving the accountability of their judiciary by monitoring courts directly through daily interactions and encouraging legislators to act swiftly and substantively to improve judicial accountability. Doing so will help fulfill our responsibilities as rising community leaders and accomplish the goals of a truly just society in Pennsylvania.

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YLD LAUNCHES 'WILLS FOR HEROES'

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"We will train scores of lawyers to serve as volunteers because we do anticipate high demand for the free services," said McKenna, who also serves on the board of the national "Wills for Heroes Foundation," a nonprofit organization responsible for encouraging nationwide expansion of the program. "Several state and national first responder organizations estimate that 80 to 90 percent of first responders do not have wills, and Pennsylvania has more first responders than any other state. It is an honor to bring this much needed program to the first responders of Pennsylvania."

The "Wills for Heroes" program was founded by Anthony Hayes, a South Carolina lawyer who wanted to do something meaningful to help the country after the Sept. 11, 2001, terrorist attacks. He met with South Carolina firefighters and noted a glaring need for estate planning services.

Future "Wills for Heroes" events will be held in Pennsylvania communities

upon the request of leaders from local police, fire and emergency medical personnel organizations or upon the request of county bar associations. On a scheduled day, a team of lawyers will bring computer laptops to a firehouse or meeting hall and spend at least an hour with each participant who pre-registers to attend the event.

A participant sits with a lawyer to review a questionnaire that the participant has filled out in advance. Answers are entered into a computer-based program. The lawyer reviews the resulting document with the participant to ensure its accuracy. After any necessary corrections are made, the will is printed, signed and notarized.

Upon request, lawyer volunteers also will work with each participant to prepare an advance medical directive, often called a "living will," which specifies what actions should be taken for the participant's health in the event that he or she can no longer make decisions due to illness or incapacity.

In addition, lawyers will prepare a durable power of attorney, a document that gives another person legal authority to act on behalf of the participant if the participant becomes incapacitated. These documents also are offered at no cost to participants.

Lawyer volunteers are not permitted to solicit business from project participants.

The free services are not suitable for persons with estates of more than \$750,000 that require tax planning and other special services.

With the recent addition of Pennsylvania, the "Wills for Heroes" program is now offered in 21 states. The American Bar Association Young Lawyers Division selected "Wills for Heroes" as its 2007-08 national public service program. The computer software used for the program is provided by LexisNexis.

For more information on this program, visit www.willsforheroes.org.