From the Chair
By Sara A. Austin, Esq.

CONNECTIONS ... WHILE ON THE ROAD

As you all know, I travelled around our Commonwealth during my year as PBA President in 2016-2017. I loved every minute of it. However, I also love being at home more now. It has allowed me additional time to connect with the Section, my friends and, most of all, my family. These connections are crucial to my well-being.

Working on the road creates different issues than being at your home or office. Assuming you are not carting around lots and lots of paper files, how will you connect to your data? Will it be a secure connection? Will there be service interruptions? Will your connections work everywhere you will be?

I thought I had it all figured out for a Labor Day weekend of camping in a state park. I contacted the park rangers ahead of time to see if there was cellular service by my chosen provider. They said “yes.” Wanting to be “safe” since there was a large document revision project I wanted to complete, I put the documents on a thumb drive for easy access and to alleviate the need for data access. When we got settled in our campsite, I checked the service ... NONE! I walked around the small campground and still found no service. I was not happy, but was not about to give up.

So now what? On our travels to the top of the mountain on Friday, we had some service, but my calls kept getting dropped, so there was certainly not enough for my project. I discovered that I had not transferred my notes of the changes to be made to the document to the thumb drive, so I needed access to my computer to get to my notes. Seeing hang gliders, which reminded me that the winds can change for the better, I was still not about to give up.

Saturday was a beautiful day. After a strenuous hike, I was ready to work on the project, but, I still needed to access my notes. We drove around for a bit to try and find some service so I could attempt to get my notes. We ended up in the parking lot of a business that was closed at the time. I turned on my hotspot, connected my VPN, logged into my system, and saved my notes to the thumb drive. Thinking I was set, I logged off, and tried to open a document in my offline version of Word. Nope — because I need a data connection for Word in Office 365 I was still unable to work on the project. Still not ready to give up …

Sunday the weather was iffy in the morning so we decided to take a drive to a nearby(!) natural attraction. A road detour at one point turned a 4-mile part of the trip into a 20-mile segment. After stopping for ice cream and finally getting to our destination we enjoyed sightseeing, people-watching, and letting the dogs out (yes of course they were with us). On the way back, we returned to the campsite via a different and shorter route. It was finally time to work on the project. How could I,
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you ask, since I had no data connection?
I completed a time-consuming workaround by making notes and a checklist from the PDF notes on the thumb drive. I did a read-through of the documents from the thumb drive and hard copy I had brought along. Using these tools I noted the changes to be made to the document when I again had access. I composed an email to the client advising of when the project would be completed. The email was queued to send to client on the way home, once my iPhone was able to access my carrier.

So why do you care about any of this, other than enjoying (and probably laughing at) my foibles? Because there is a lesson that weaves through all the Section does and all it stands for — connecting — both in your practice and your life. The Section helps you to understand when one of these must take priority over another, and what to do when you need to connect with both and it seems impossible. I have been lucky enough to attend many Conferences which taught me tidbits from colleagues in the Section who are more tech-savvy than I am. These tidbits helped me craft the workaround which allowed me to enjoy my family connection time and connect to the piece of work I wanted to get done.

This weekend also provided a valuable lesson. Double-check all connections, including data, before you leave. Also check your connections with family. I always alert my father, who I phone every night if I won’t be seeing him in person, that I may not have service and not to worry. I also try to line up a friend to contact him just in case we can’t get through to each other. Although I had issues, I thought I did well with what I accomplished even in light of what the ranger said. I learned that services may differ dramatically when not in a modern hotel, so I need to have in place a fully thought out Plan B to connect to whatever work needs to be done.

Keep a handle on your connections. Work hard. Connect to the office from wherever your practice may take you. Be able to get your questions answered by posting on the Section’s list serve. At the same time, remain connected to your family, too, whether by phone or some type of electronic access such as Facebook or Skype.

Connections make our chosen lives possible, even on the road. As the official summer season turns into autumn, I wish you the best of everything and hope that we connect again somewhere, sometime soon. Please contact me at saustin@austrinlawllc.com with any ideas of programs or projects the Section can do to help you, or even just to connect. The Section, a part of the PBA, is truly Your Other Partner.

Sara A. Austin, a partner in the Austin Law Firm L.L.C., in York, is a past president of the PBA. She is also a past president of the Pennsylvania Bar Institute, Chair of the PBA Solo and Small Firm Section, and member of the PBA Commission on Women in the Profession. She is a past president of the York County Bar Association and a Pennsylvania delegate to the American Bar Association.

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Emojis Are Causing Issues: Are You Ready?

By Jennifer J. Ellis, Esq.

At the 2019 Solo and Small Firm Conference in Bedford Springs, Sara Austin and I spoke on issues relating to Emojis and how they are showing up in court. Emojis are those images that people use on their phones and in social media to express various ideas in a simple image form. They started as smiley faces and have become more complex over the past few years.

During the conference, Sara and I received our biggest laugh when I asked the attendees if they knew what the eggplant emoji represents. Hint, it isn’t a vegetable. In fact, the eggplant emoji, especially when paired with the peach emoji, can serve as part of a sexual harassment complaint.

Another important issue to keep in mind is that different emojis appear differently on different devices. As a result, an emoji that looks like a harmless water gun on an iPhone, looks like a threatening handgun on another device. This means, if you end up in a dispute over whether an emoji used in a text was meant as a threat, you need to understand not only what the text showed on your client’s phone, but what it looked like when the other person sent it.

Make certain that you are up to date on how emojis are being used in society, so you can advise your clients properly when the time comes that they bring an issue to do your door. A good place to begin your research is on the website https://emojipedia.org/.

Jennifer L. Ellis is Chair-Elect of the Solo and Small Firm Section. She can be reached at jennifer@jlellis.net.

THE PRIMER SERIES: CONFESSIONS OF JUDGMENT

By Eric D. Hochfeld, Esq.

Introduction by Arlene Ann Dudeck, Esq.

Eric is one of my law partners and along with being a really good attorney, is easy to talk into things – like writing this column for us. I was recently watching Bloomberg Businessweek and my ears perked up when I heard the hosts ask one of the Businessweek authors about a story he did on Confessions of Judgment. Eric and I had just finished up a large commercial closing the day before and had to explain to our client what a Confession of Judgment was and how it worked. Confessions of Judgment are sometimes illusive and attorneys should know how they work to explain them to their clients, as they are prevalent in commercial and other transactions. So a big thank you to Eric for fielding these questions and helping us navigate the Confession of Judgment minefield.

1. What is a “Confession of Judgment?”
A Confession of Judgment is a procedure where a lender or creditor can file a judgment without going through the normal complaint, answer, discovery procedure. It is available only when a Borrower has agreed to the remedy in the event of default.

2. What are the rules that govern a Confession of Judgment?
The procedure is governed by the Pennsylvania Rules of Civil Procedure 2950 through 2986 and there are specific provisions regarding the contents of the complaint, judgment entry and execution on the judgment.

3. Are there any safeguards built into the Rules to protect the Borrower?
First, Confessions of Judgment cannot apply to “consumer credit transactions” which are defined in the Rules as “a credit transaction in which the party to whom credit is offered or extended is a natural person and the money, property or services which are the subject of the transaction are primarily for personal, family or household purposes.”

Second, the Rules provide that relief from the judgment can be sought by Petition. The Borrower can file a petition to open the judgment which would

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allow them to assert a meritorious defense or a petition to strike the judgment averring that there is a defect appearing in the record. A hearing will be scheduled before a Judge to determine the outcome.

A 30-day notice of execution must be also be given before any personal or real property may be levied upon by the Sheriff.

4. Is a Confession of Judgment used often?
It is routinely used in commercial transactions but, as said above, cannot be used in consumer credit transactions.

5. If a client brings me a Complaint for a Confession of Judgment that has been filed, what is the first thing I should do?
You should review the complaint to make sure that the document cited provides for the Confession. A copy of instrument must be attached to the Complaint showing the defendant’s signature. If the instrument meets the criteria in the Rules you will next need to determine if there is a basis to file a Petition to Open and/or Strike within 30 days of the filing of the Complaint.

6. Are Confessions of Judgment ever misused?
There have been instances. In New York cash-advance firms who lend money to small businesses such as pizza parlors or nail salons have routinely misused these remedies causing New York Governor Mario Cuomo to recently sign legislation protecting borrowers from these predatory practices. Pennsylvania has more protections built into the Rules of Civil Procedure, however, a Borrower has to understand what they are signing.

7. Any final advice?
My comments are from the prospective of a Borrower in the transaction, not the lender or creditor. If you represent a borrower, review the terms of the Confession of Judgment, which would also include attorney fees, and the power it gives the lender.

Eric D. Hochfeld is a partner in the law firm of Sahlaney, Dudeck & Hochfeld in Johnstown, PA. Eric is also licensed in New York, his home state. His practice focuses on Business Litigation, Orphans Court Litigation and Business Formation.

SAVE THE DATE!
July 29 - 31, 2020
PBA Solo & Small Firm 2020 Annual Conference
Bedford Springs, PA
Behind the Scenes at a One-On-One

By Ellen Freedman, CLM, PBA Law Practice Management Coordinator

Each year at the Solo & Small Firm Section Conference I have a limited number of 15 minute slots available for members to book a one-on-one meeting with me. For many, it’s the first time they’ll meet me in person. Some slots are taken by regulars. Most of those in attendance miss out, a large number of which are unaware of what the sessions are for.

I am frequently asked what gets talked about behind the door. All discussions are confidential. Skeptics always ask how much can actually be accomplished in just 15 minutes. Often their tone of voice conveys that they have complex issues to wrestle. I thought this newsletter would be a good opportunity to pull back the curtain to reveal the wizard, with all the switches and levers.

It’s surprising how much can be accomplished in just 15 minutes. Regulars come in with a scrap of paper with questions noted. They are prepared to get immediately to the point to get the answers they need. They are rarely disappointed. Sometimes I must follow-up by sending additional resources when I get back to the office. Once in a while a follow-up call is scheduled to finish a discussion in more depth; often after the attorney has time to gather some additional information I need on the subject at hand. Or include someone else at the firm on the call to build consensus.

Many times an attorney meets with me for simple validation. Tears of despair or frustration sometimes fall on the table. Like a good psychiatrist, I am usually able to make sense of conflicting emotions, validate fears and anger, and most importantly, illuminate a path which has been previously unseen.

Not all problems have easy solutions. Sad but true. The process of validation may morph into a discussion about how much more one is willing to put up with before a change of venue is made; whether that is a possibility emotionally, financially, and given personal obligations. I frequently begin sentences with, “Life is too short to have to continue to put up with . . . .” And sometimes it’s just a simple matter of letting someone know it’s ok to say NO.

The most frequent topic always concerns declining revenues and/or profits, and how to generate additional work. Frequently this is intertwined with having too much work and too few hours to work on client development.

I wish I had a dime for every time someone asks what single activity will have the greatest impact e.g. return on time investment. Everyone is hoping that I will be able to provide an answer that involves delegating the work 100% to someone other than the attorney. Unfortunately it rarely works like that. For the few areas of practice where it’s possible, the attorney prefaxes the conversation by saying they don’t have the finances to compete at that level. That assessment is usually correct, unless the attorney is able to divert a fair amount of otherwise billable time or family time to marketing activities.

Probably the most frequent advice concerns how to maximize use of the time available. I often talk about how client development requires thought and research, developing strategies, writing down goals and action steps, and then blocking time on the calendar for all of it. In just under four decades serving the legal industry, I can assure you that a lack of good ideas is rarely the problem. It’s breaking down ideas into a written action plan with specific goals, objectives, and action steps, and then setting aside the time on the calendar to get it accomplished.

Those of you who read this article are not only members of PBA, but constitute the majority of attorneys in the state. You have unique challenges in a solo or small firm environment. Remember, if they are on the business side of your practice, I am here to help! You’ll be surprised what we can accomplish in a relatively short period of time.

Ellen Freedman, CLM is the Law Practice Management Coordinator of the Pennsylvania Bar Association. In that capacity, she assists PBA members with issues and problems that arise on the business side of their practice. Ellen is also president of Freedman Consulting. Ellen encourages your feedback and questions. She can be reached at 1-800-932-0311 x2228, or by email at lawpractice@pabar.org.
MEMBER SPOTLIGHT:
Marshal Granor, Esq.
Introduction by Arlene Ann Dudeck, Esq.

I’m not sure if I’ve ever met Marshal in person, but I feel as though we’ve been friends forever. Marshal has stepped forward for us and written for the Newsletter when we’ve needed him. He does amazing work and we wanted to share his story. Please enjoy meeting Marshal through his words — I know I did.

“Don’t try so hard on your grades. You already have a job waiting.”

My friends at Temple Law were hoping I would not ruin the curve, which wasn’t very likely since I’d been a B student all my life. But they were right about that job. From the time I could walk, I’d been a fixture in my father’s workplace. It started in the tiny two-room law and real estate office in my grandparents’ row house basement garage. From age three, I loved the excitement of riding along to show houses to potential buyers and sitting in my dad’s big wooden chair, listening to the rhythm of him dictating legal documents into his Dictaphone.

My dad’s father was our real estate salesman and his mother was the receptionist and legal secretary — not bad for an immigrant orphan and a first-generation American, both without a high school education. My grandmother’s mantra was, “You can do anything with your life if you have a law degree.” After all, my dad had done that, and everyone in the family assumed I’d follow in his path.

My father, Bernard, tried his hand at criminal defense and hated it. Maybe real estate was enticing because poverty saw my father’s family live in 18 houses before dad graduated from high school. Over time, his legal work morphed into real estate sales, mortgage lending, and then home building. He always said, “If you control the listings, half of the battle is won.”

I spent my summers in my father’s office until age 16, when I was made a construction laborer (bad idea). In college, I arranged my classes to have Fridays off to be the bookkeeper for the family homebuilding company. I got my real estate sales license at age 18, but was never good at selling. I preferred the problem-solving opportunities of working with people to qualify them for a mortgage or to explain contracts.

I’ve lived my entire life within a 10-mile radius in and around Philadelphia, commuting to college while living at home and then in law school, married and living in an apartment. When I graduated from Temple Law, I was sent to sell new homes. Life can be a series of lucky adventures — at least, if you let the wind blow you where it wants you to go. That community was the first condominium we built. As the youngest member of the firm, they had me learn all about condos. And as the wind blew, condominiums became my area of specialty.

When the “new” Uniform Condominium Act became law in 1980, I had just passed the Bar and was ready to learn all about it. A wonderfully selfless Philadelphia attorney, Kenneth I. Rosenberg, willingly shared his documents and knowledge with me. His kindness and life-long friendship helped sculpt my career. (I miss you, dear friend. I thought you had just enough chutzpah to beat pancreatic cancer.)

Although I didn’t have the title, I was “in-house counsel” for our homebuilding company. I was also the sales manager, home designer, marketing department and, over time, a board member of 26 condo and homeowners associations. With a law degree but no training in business or marketing or public relations, I also earned licenses to open and run a small title insurance agency and mortgage brokerage. During all of this, my dad and I maintained a small – basically incidental — law practice helping buyers and sellers of real estate make their dreams happen.

My early ties to the Pennsylvania Bar Association were simply paying my membership dues and reading the Real Property, Probate and Trust Law Section newsletter. That’s where I read about amendments to the UCA which I found to be singularly anti-builder. As a young and impetuous lawyer, I penned a stinging letter to Jim Rosenstein, the Section Chair. Instead of the snarky reply I’d earned, Jim invited me to become involved and to assist the next time the RPPT Section had a legislative initiative.

I didn’t have to wait long. In 1988, I was invited to join the Common Interest Community Sub-Committee, looking to adapt the Uniform Planned Community Act for PA use. Jim said it would be a fun summer’s work.
It took nine years before passage! I was young and naïve about legislation. Chairman David Haas was another wonderful mentor who held my hand through this process.

Once the UPCA became law, I was sent to travel the Commonwealth with the other authors to teach it to our colleagues. I had NEVER taught before. In fact, I never volunteered in class, took a part in a play, or did anything remotely close to public speaking. But there I was on the dais with David and the other co-authors speaking to the best and brightest real estate lawyers in Pennsylvania.

Teaching was a family tradition, just not a place I saw myself. My mom taught elementary school, then preschool, as well as volunteered to teach English as a second language. My aunt taught high school. My dad taught the real estate license course for many years. (Imagine, your dad grades your exams and then you grade the others!)

The wind had blown yet again. From 1997, I have never stopped teaching. I became an adjunct professor of real estate law in the paralegal program at Manor College. I’ve taught for PBI as well as for real estate schools, title companies, community associations and more. I love the intellectual challenge of standing before smart people with whom I can interact. I learn every time I teach, and preparing the materials reminds me of the basics I may have forgotten.

Rich Heller, past RPPT Chair, saw me teach a PBI session and recommended me for membership on the RPPT governing Council. I was flattered. And here I am this year as Section Chair. I feel both a duty and pride to give back in part for all the people who held out their hands to me along the way.

Likewise, when my parents were looking to end a 20-year reign at the helm of the Hebrew Free Loan Society of Greater Philadelphia, my wife, Tamar, and I stepped up and led that charity for 14 years. Helping people with a temporary financial need and assisting new businesses is tremendously gratifying work. Earlier this year, an anonymous donor loaned us $500,000 to make 400 loans to lower-income federal workers who were forced to work without pay during the furlough.

My dad’s first partner — my grandfather — died at age 59, in 1965. My grandmother remained my dad’s business partner until her death in 2001 at age 94. I am extraordinarily proud and delighted that he has been my law partner from 1980 until today. At age 91, he still teaches me from his experience and wisdom.

Few colleagues know that when I hit the ripe old age of 44, I had a sudden fainting episode which led to 18 months of trying to find out why, all the while becoming weaker and at times barely able to walk. I was misdiagnosed and given the wrong drugs which almost killed me. Then I found an internet support group which directed me to a specialist in Toledo, Ohio. Once I was properly diagnosed and medicated, I started to regain my strength and chose to become a moderator of that support group for over a decade, to return the favor. I met people with the same medical oddity online and then in person when I traveled around the country or overseas. I also spoke to parents of children dysautonomia to explain that many people can lead a near-normal life with this condition. Having been through this scare and recovery made me much more aware of the difficulties — often unseen — that others endure every day.

When my dad and his building partner decided it was time to retire, the homebuilding business ended. I was in my mid-50’s. What to do next? Having done much work with community associations from the drafting and operational side, I chose to try property management. I did it more to keep long-time employees working than anything else. While interesting, it was an intense and aggravating business which I sold after six years.

Why? Once our homebuilding business ended, my former competitors started to hire me to draft community association documents and my law work grew to full-time. Now, I wake up every day with a smile and a rush to get to my desk.

For sanity, I sing. Another unexpected breeze — I sing at the elementary school my boys attended decades ago, where their talented music teacher formed a community choir to bring the generations together through song. Choral music blends the beautiful sounds of human voices in a common goal. It reminds me I’m not much by myself, but with others, our voices are powerful. Singing also unexpectedly took me to the homelands of my mother’s parents in Eastern Europe and then to Cuba, when my synagogue’s choir chose those destinations.

This long story could be from any of you reading it. I have been lucky but my dad would say I was skillful. There was no master plan to chair RPPT or to become a “Condo Pundit.” I was just in the right place at the right time. Or perhaps, I have been willing to accept the gift of wisdom from many truly wonderful people who took the time to share with me.

I have mentioned only a few names and unfortunately have omitted dozens of others to whom

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I’m indebted. As partial repayment, I give back as best as I can, through my work for the RPPT Section, by my participation in the Solo and Small Firm Section listserv, and by teaching. Tamar and I have also enjoyed teaming together for community volunteer work.

One of the major initiatives of the PBA, the Solo and Small Firm Section and RPPT is mentoring the next generation of lawyers. Yes, they are our competitors but, more importantly, they are our colleagues and our future. Our profession and society as a whole are much better when we share our knowledge and experiences with others.

Marshal Granor is Real Property division chair of PBA’s Real Property, Probate and Trust Law Section, a fellow in the College of Community Association Lawyers, and a member of Community Associations Institute’s Legislative Action Committee. Marshal teaches continuing education courses for attorneys, real estate agents and title insurance agents, and is an adjunct professor of law at Manor College. He practices at Granor & Granor, PC in Horsham, PA.

Musings of a PA Family Lawyer: Engagement Rings and Other Things

By Ann M. Funge, Esq.

I love the PBA Family Law Section’s listserv. I love its ability to provide multiple and immediate answers to our “burning” issues of the moment.

I love seeing seasoned lawyers offering advice and encouragement to the young ones brave enough to ask questions of the faceless and mostly unknown providers of the listserv’s collective knowledge. And, I love it when a small skirmish arises regarding a point of fact, practice or law. (Sorry, I can’t help it. I am a family lawyer, after all.)

In early April, an issue arose regarding the marital nature of engagement rings. The original inquirer was from the western part of Pennsylvania. Various listserv members chimed in and some strenuous back-and-forth ensued. One participant even attached supporting case law. Another delivered almost a legislative history, providing the citation to the 1985 Pennsylvania Supreme Court case, Semasek v. Semasek, 502 A. 2d 109 (Pa. 1985), which purportedly prompted an amendment to the divorce statute to define gifts between spouses as marital property. (Like I said, our listserv is wonderful thing!)

All participants agreed that an engagement ring is a conditional gift. However, practitioners from western Pennsylvania generally and fervently opined that an engagement ring becomes marital property upon marriage and, thus, is subject to equitable distribution. Practitioners from the eastern part of the state generally and just as fervently opined that an engagement ring becomes a pre-marital gift upon the marriage and, thus, is not subject to equitable distribution.

As a family lawyer who previously worked for roughly 13 years in the “West” (primarily in Allegheny county, but also in the surrounding Washington, Westmoreland, Beaver and Butler counties) and who now has spent the last 13 years in the “East” (in the five-county, Philly metro area), I have experienced firsthand the cognitive dissonance of knowing, or thinking that I know, what the law is and then, with mouth agape and heart pounding, seeing it interpreted or applied in a completely different way. This happened fairly frequently and once or twice quite embarrassingly when I moved from West to East. The engagement ring issue is probably the most frequent and most emotional of these issues. The first time a lawyer in the East impatiently told me that the value of an engagement ring that even Liz Taylor would envy would not be included in the marital estate because the ring was pre-marital, I was shocked. After picking my chin up off the floor and asking around, I realized that I was not in Kansas anymore.

As a young family lawyer, I worked on the brief on behalf of the engagement ring donor, Roger Lindh, in the Pennsylvania Supreme Court case, Lindh v. Surman, 742 A. 2d 643 (Pa. 1999). Roger, “a divorced, middle-aged man, and Janis…, the object of Rodger’s inconstant affections”,

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brought their dispute over whether the donee of an engagement ring must return the ring or its value when the donor breaks the engagement to court. Id. at 643. In holding that the donee must return the ring regardless of who breaks the engagement, the Pennsylvania Supreme Court lengthily discussed the notions of fault and no-fault and, importantly for divorce practitioners, the actual condition which converts an engagement ring into a perfected gift vesting title in the donee. Id. at 645.

I knew the argument inside and out and was as thrilled, as only a young family lawyer can be when the Supreme Court affirmed in our client’s favor. (NB: Three of the nine justices dissented solely to the no-fault stance for broken engagements adopted by the majority. Interestingly, Justice Sandra Shultz Newman, the court’s first and, at that time, only, female justice wrote the majority opinion.) Bottom line: an engagement ring is a conditional gift and that condition is met when the donor and donee become spouses. Therefore, an engagement ring unequivocally is marital property for equitable distribution purposes. Lindh solidly controls on this issue, despite later Superior Court decisions implying in dicta that engagement rings are non-marital. See, e.g., Childress v. Bogosian, 12 A.3d 448, 453 (Pa. Super. 2011). The Lindh decision is 20 years old and still lawyers and decision-makers here in the East often insist that engagement rings are pre-marital.

In pondering how and why such statewide dissonance can occur when the Lindh case is so seemingly bright-line and, frankly, at this point, old, I wondered whether cultural change moves far slower than I thought, even among the folks, like judges and lawyers, who create such change. Heck, the practice of “put[ting] a ring on it” goes back to at least the ancient Romans and involves evolving core ideas like the roles of women in society and romantic relationships and the concept of marriage. (Kind of hilariously, to this woman at least, Wikipedia reports that a new name for men’s engagement rings is “management rings”.) Then, a little voice interrupted my “deep thoughts” and said, “No, Ann, the dissonance exists simply because the Lindh case was a civil contract case, not an equitable distribution case. The logic flows over to ED, but not obviously so.” Duh. In the words of the late, great Theodot Geisel a/k/a Dr. Seuss, “Sometimes the questions are complicated, but the answers are simple.”

So, hear me now and believe me later, good people, ENGAGEMENT RINGS ARE MARITAL PROPERTY SUBJECT TO EQUITABLE DISTRIBUTION.

Hey you family lawyers: Having any musings you care to share? Contact Liz Fineman at EFineman@ammlaw.com to submit ideas for publication. Thank you, Meredith Brennan, Esquire, for your thoughts and feedback on this writing.

Ann M. Funge is the principal of Funge Family Law, LLC, with offices in Philadelphia and Radnor. She has practiced exclusively in family law since graduating from the University of Pittsburgh’s School of Law in 1993, first for 13 years in the Pittsburgh metropolitan area and, since May 2006, in the Philadelphia metropolitan area. Ann has chaired the Philadelphia Family Law Section as well as various committees in the Pennsylvania, Montgomery and Allegheny County Bar Family Law Sections. She holds a B.S. in Commerce from the University of Virginia (1987) and her JD from the University of Pittsburgh (1993). You can reach Ann through her website fungefamilylaw.com.
Playing with Fire: The 1968 Election and the Transformation of American Politics
by Lawrence O’Donnell

Review by Michael J. Molder, JD, CPA/CFF, CFE, CVA/MAFF
Introduction by Arlene Ann Dudeck, Esq.

Any of you who watch the listserve know that I put out a few requests for someone to write this column. In the last request, I went so far to say that if no one volunteered to review a book I would first, cry, and then write the column. Obviously, this hit some kind of nerve, as I had three volunteers in the next 30 minutes. I wish this kind of ploy worked on my husband, but I digress. Since Michael was the first one to come to my rescue, he is, therefore, the lucky one to write this review. Michael has written for our newsletter previously and has presented at the Solo and Small Firm Conference in Bedford. The book he has chosen is amazing and I hope you are as intrigued by the subject as I was. A big thank you to Michael for sharing his review with us.

I have finally come to acknowledge that I’m a person of “a certain age.” I’m old enough that my high school history curriculum did not make it to Watergate and the Nixon impeachment hearings. At the same time, I’m young enough that my only memory of Richard Nixon is coming home from boy scout camp in August 1974 to my parents telling me that the President had resigned. My first thought was “Okay. Can I go outside and play now?” Over the years, Richard Nixon became a punchline for anybody denying scandal; they would hold up their hands while saying, “I am not a crook!” So, while I may have technically lived through it, I was clueless about that portion of U.S. history.

Luckily, Lawrence O’Donnell’s interest in modern U.S. history was greater than mine. I found his book on the 1968 presidential election truly enlightening. O’Donnell starts the analysis in the summer of 1967. While Vietnam had been a problem since its partition in 1954, the difficulties expanded following allegations of North Vietnamese gun boat attacks on U.S. naval vessels near the Gulf of Tonkin in 1964. Within a week, Congress passed the Gulf of Tonkin Resolution that authorized the use of conventional military force without a formal declaration of war. Following election to his first full term, President Lyndon B. Johnson began ramping up U.S. military resources in southeast Asia. As the commitment of resources grew, so did the body count. By the summer of 1967, Congress was feeling the pressure of protests among America’s youth — who were facing the prospect of being sent to Vietnam — and began trying to assess the future of the conflict.

Up to this point, President Johnson, who’d been elected in 1964 with a substantial majority, was coasting to re-nomination and, likely, reelection. Those Senate hearings, however, started Eugene McCarthy vocally questioning the United States’ role in Vietnam, and ultimately, challenging Johnson. At first, McCarthy was little more than an annoyance; then the New Hampshire primary happened. Thousands of college students, beards shaved so they could be “Clean for Gene,” swarmed the state. While Johnson still won the primary with 49%, McCarthy’s 42% share of the vote showed

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how vulnerable the president was. Robert Kennedy, the popular New York senator and brother of assassinated national darling President John F. Kennedy, had coyly demurred previous entreaties to challenge Johnson. Now he saw the vultures circling and declared his candidacy. Johnson withdrew from the election, opening the door to Vice-President Hubert Humphrey.

O’Donnell does not ignore the Republicans. From a 21st century political perspective, the candidates on the Republican side drew an interesting cast of characters. Liberal New York Governor and old-money elite Nelson A. Rockefeller, conservative California Governor and actor Ronald Reagan and moderate Michigan Governor and automotive industry bigwig George W. Romney vied for the nomination against former Vice President and “win at all costs” kind of guy, Richard Millhouse Nixon.

Since this is history, it’s not really a spoiler to point out that Humphrey and Nixon secured their parties’ nominations. Adding to the Shakespearian nature of this election cycle, former Alabama Governor George Wallace mounted a third-party bid for the presidency. Ultimately, Nixon eked out a slight win in the popular vote (beating Humphrey by about 500,000 votes) but cleaned up in the Electoral College (winning 301 to 191 with Wallace taking five states across the deep south).

Playing With Fire covers all of the high points — well, maybe low points — of the ’68 election: the assassinations of Martin Luther King and Bobby Kennedy, the riots and disastrous police response at the Democratic convention in Chicago, Wallace’s unabashed race baiting and on and on. Perhaps the most interesting parts of the book are the behind the scenes details. Nixon’s back room deals to steal conservative southern states from the conservative candidate, Ronald Reagan, and his subsequent betrayal of those deals, which may have been the reason Wallace won those states in the general election. Johnson sabotaging his vice-president by giving Nixon inside details of events in Vietnam without telling Humphrey. Nixon engaging in near treason to defeat Johnson’s 1968 attempt at a peace accord in order to keep the war as an issue through the election. Before the explosion of investigative journalism and the now-ubiquitous 24/7 news cycle, these parts of the story were not widely known.

O’Donnell has taken some heat because, political pundit that he is, he couldn’t help comparing the 1968 election to our current political situation. Maybe the comparison is worthwhile. So many of us believe that the American political system is suffering irreparable harm. For a while now, we have been bombarded with cries of alarm that the president is being imperialist, that every action coming from the White House is not only unprecedented, but unpresidential. The reality is that the United States has gone through difficult political environments many times before. The revolutionary era was hardly the time of uniform opinion and civil debate that we now like to think it was. The first several presidents dealt with stark divisiveness in the legislature and opposition from the media. The 1850s and the Civil War period were also times of deep divisions and backstabbing in Washington. As Playing With Fire shows, the late ’60s were not just a time of cultural conflict between generations, but also an equally difficult time in politics. Perhaps the takeaway from this book, in addition to filling in a lot of facts for folks who may have been politically disengaged in 1968, is that what’s going on now just seems new and apocalyptic … we’ve been there before.

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Photos From the Annual Conference
Photos From the Annual Conference
Happy Fall Everyone!!! Football is back, the leaves are turning and the garden is producing like mad. So, with work being crazy and family obligations, what’s an attorney to do? They can — as in — put stuff in jars and enjoy it during the winter.

Mary and I both can and we had an email discussion one night when my dog, Luna, was barking every time a jar sealed. Mary and I learned from our mothers and grandmothers that when a jar seals you say “Thank You” to the jar. It’s just one of those superstitions that canners have and it really is a “thank you” because, after all the work, you just want the darn jars to seal. So we figured I had passed down the tradition to Luna.

Why am I talking about this? There are two lessons that I want to share about what I learned from my garden this year. The first, be grateful. For a good reason, the work at our firm has been so busy I work from 5:30 in the morning until I leave the office around 6:00 and then try to do something at night if my brain will allow me. While I am trying to prioritize projects and don’t think I can fit another thing into my life, I realize that I have to take what the garden has given me and preserve it. It would be easy to put that task to the bottom of the list and for the past couple years, that’s exactly what I have done. This year was different. I made time this year to make spaghetti sauce, pickles, applesauce, hot pepper mix, jalapeno pepper jelly and, yes, homemade hot sauce. At a time when my brain was processing too much at work, taking time to preserve these things from the garden actually helped me subconsciously think through work projects because I could clear out all the noise. During the canning process I became grateful for the work I had, and for the food I was preserving.

The second lesson is that we need to make time to do things we enjoy. Sara’s column shares the same lesson. In a time where I can’t seem to figure out what to put first because everything is a priority, taking the time to can and concentrate on something other than work has a calming effect. After spending several hours making spaghetti sauce, you would be surprised at how I can resolve the projects I have.

So, this fall, take some time to enjoy the changing leaves, binge watch a series you love, take a hike or play in the garden. Whatever it is, take time for yourself and be grateful for what you have.

We are proud to report that the Solo and Small Firm Conference held in Bedford Springs was a huge success. The Conference offered amazing CLE seminars, entertainment and a chance to connect and network with fellow Members. Our thanks to the planning committee, the presenters and Sara and Jen who worked so hard to create an outstanding event. Mark your calendars for next year. The Conference will be held July 29-31, 2020, at Bedford Springs.

We always look forward to sharing the successes of our Members:

- Sam Miller was elected to his third term as Vice-President of the Pennsylvania Bar Foundation. Sam has previously been the president of CCBL, the Montgomery Bar Association and the Montgomery Bar Foundation. Congrats to Sam!!!
- Tom Wilkinson has been appointed Chair of the DRI Lawyers’ Professionalism and Ethics Committee. Tom always keeps us up to date on ethics issues affecting our profession and we are grateful to have him.

Speaking of grateful, we want to acknowledge the contributors to this issue. They have answered “yes” when we asked them to write and put their hearts and souls into these pieces. We have said it 100 times, but we will say it again, we could not do this without you. Our next publication is the Holiday Issue with a deadline of November 10. Please email us at mesesq@wpia.net or aad@sdlo.com to let us know if you’d like to contribute.