PGCBA NewsJournal

Newsletter of the Prince George's County Bar Association, Inc. *June 2014*

President's Message

Thank you to all who contributed to this bar year. It has been a pleasure.

On 10 June 2014, we will transition into the very capable hands of our new President, Denise Bowman.

Have a wonderful summer!

Jennifer.

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Member Announcements

The Brown Bag Lunch and Law Practice 101 will resume in September. Watch for emails in August with dates.

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The Prince George's County Bar Association NewsJournal does not run in the months of July or August. It too resumes in September. Please remember if you have anything to put in the September NewsJournal it must be in our office by the 15th of August.

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Our New Bar Year Begins July 1, 2014 Membership Dues & New Parking Pass Renewals Will Be Mailed Out and Due By July 1, 2014.

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PGCBA NewsJournal

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PUBLICATION DEADLINE 15th of preceding month. Approved advertising accepted; rates submitted upon request. Statements or opinions expressed herein are those of the authors and do not necessarily reflect those of the Prince George's County Bar Association, its Officers, Board of Directors or the Editor. Publishing an advertisement does not imply endorsement of any product or service offered.

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administered in-house by PGCBA
Call Elizabeth Anderson **301-952-1440**
for information and Client Referrals.

PGCBA Traffic School
Robin B. Hadden, Executive Director
Email: rhadden@pgcba.com
Telephone 301-952-8154

PGCBA Mission Statement

...to represent the legal profession and to serve its members and the community by promoting justice, professional excellence, collegiality and respect for the law.

Lawyers in Need

...an ad hoc program for members under some form of distress or disability which will assist in keeping files productive while help is obtained and assist with professional referrals. For help, call

James Flynn 301-932-0700
Robin Shell.....240-472-9919

Ethics Hotline

Any member wishing to obtain an informal ethics opinion may call the Ethics Hotline

John R. Foran.....301-441-2022

Designated Conciliator Program

William Renahan.....301-351-7531
Gerald C. Baker 301-577-4600

THANK YOU!

The Circuit Court law library staff would like to thank everyone who donated to our Book Drive benefiting Military members and families. Over 300 books were collected that will go towards enriching the lives of our military troops and family. This book drive could not have been a success without your generosity.

Sincerely,
The Circuit Court Law Library Staff

WELCOME NEW MEMBERS!

JOHN P. HOTZ
H&H LAWWORKS, LLC

STEPHANIE PRATT ANDERSON
O'MALLEY, MILES,
NILEN AND GILMORE

DENISE ADAMS MARTIN
MCCHESNEY & DALE, PC

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SOPHIA THELUSMA
THE TACHI LAW FIRM, LLC

LANET RENEE SCOTT
THE LAW OFFICE OF LANET SCOTT

"The PGCBA is glad to have you as our new members!"

Thank You!

To our members who gave their time and support to answer our Legal Advice Line once a month, prepare an article for our Newsjournal, and serve on one of our various committees.

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Thank You!

to the Staff of the Prince George's County Bar Association for supplying outstanding support to the Members.

VOIR DIRE – RECENT CASES AND SOME THOUGHTS

by Robert C. Bonsib, Esq. and Megan E. Coleman, Esq.


Voir dire begins the criminal jury trial. The composition of the members chosen to serve on the jury may ultimately determine its receptivity to your position and your evidence. Judges vary in what each may permit as to the scope of voir dire. Different types of cases require thought regarding the case specific questions that should be asked of prospective jurors. What voir dire is permitted may be based on how well your proposed voir dire is crafted to the specifics of your particular case Having information regarding the potential bias or prejudice of a juror is often more than simply accepting a "yes" or "no" answer to a question.

In the end, as we all know, jury selection is often more a process of de-selection – getting rid of those prospective jurors that we least want – and not so much "choosing" the jurors we want.

This article touches on some of the issues raised in recent reported appellate cases and reviews some basic principles regarding the law of voir dire in Maryland. The cases discussed in this article discuss a minimum for voir dire and not necessarily "best practices." In considering these cases, it is important to remember that just because a question does not have to be asked does not mean that it cannot or should not be asked. As noted herein, the Court of Appeals has raised the possibility of a revision of Maryland's "limited" approach to voir dire and has indicated that it will refer the matter to the Rules Committee to determine if the use of voir dire should be approved, not just to ascertain whether there is a basis to challenge for cause, but also as a vehicle to assist in the intelligent exercise of preemptory challenges.

Practitioners may wish to suggest to judges who want to streamline and expedite the voir dire process and say to you – "I am not required to ask this question" - that such an approach may soon (whatever that means in Rules Committee time) be a "relic of the past" if the Rules Committee accepts the invitation of the Court of Appeals to revisit the issue of the purpose and scope of voir dire.

We all know the satisfied feeling we have when appearing in front of a judge who is willing to take the time to ensure that the panel of 12 has the best chance of being composed of citizens with an open mind and who bring their common sense to the jury box. We also know that feeling that justice is being given a second chair when the mood in the courtroom is to "get 12 in the box" as quickly as possible and move on.

A QUICK OVERVIEW

The United States Constitution provides that a defendant has a right to "an impartial jury." U.S. Const. Amend. VI; Md. Decl. of Rts. Art. 21. Voir dire "is critical to" implementing the right to an impartial jury. *Washington*, 425 Md. 306, 312 (2012).

Maryland employs a "limited voir dire" meaning that the sole recognized purpose of voir dire "is to ensure a fair and impartial jury by determining the existence of [specific] cause for disqualification" rather than, as in many other jurisdictions, facilitating "the intelligent exercise of peremptory challenges." *Pearson v. State*, 86 Md. 1232, 1235 (2014) (citing *Washington* at 312-313). As a result, the Court of Appeals has said that "a trial court need not ask a voir dire question that is 'not directed at a specific [cause] for disqualification [or is] merely 'fishing' for information to assist in the exercise of peremptory challenges[.]'" *Pearson* at 1235-36 (citing *Washington* at 315). In deciding whether to ask a proposed voir dire question, a trial court should weigh the expenditure of time and resources in the pursuit of the reason for the response to the proposed voir dire question against the likelihood that pursuing the reason for the response will reveal bias or partiality." *Pearson* at 1237 (citing *Perry,* 344 Md. at 220, 686 A.2d at 282).

It should be noted that because the *Pearson* Court resolved the case on other grounds, the Court declined to resolve the issue of whether Maryland should continue using limited voir dire or instead, whether it should allow voir dire to facilitate the intelligent use of peremptory challenges. *Pearson*, at 1244 n. 1. In an encouraging comment, the Court of Appeals said that it needed further information concerning whether it might move in that direction and would, therefore, refer the issue to the Standing Committee on Rules of Practice and Procedure for its consideration and recommendation. *Id*.

Perhaps there is some hope for a Rule change that would expand the nature of the voir dire required in Maryland.

It is well established that "It is the responsibility of the trial judge to conduct an adequate voir dire to eliminate from the venire panel prospective jurors who will be unable to perform their duty fairly and impartially, and to uncover bias and prejudice." *Washington*, 425 Md. at 313.

Let us now discuss what the recent cases tell us is required.

MANDATORY QUESTIONS FOR SPECIFIC CAUSE FOR DISQUALIFICATION AND STATUTORY GROUNDS FOR DISQUALIFICATION

A trial court must ask a voir dire question if the question is "reasonably likely to reveal [specific] cause for disqualification." *Pearson* at 1236 (citing *Moore v. State*, 412 Md. 635, 663 (2010). There are two categories of specific cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a "collateral matter [is] reasonable liable to have undue influence over" a prospective juror. *Pearson* at 1236 (citing *Washington*,

VOIR DIRE, Cont'd

425 Md. at 313). The second category is comprised of "biases directly related to the crime, the witnesses, or the defendant." *Id*. In this second category, counsel should be prepared to establish that the specific facts of the case make relevant the asking of the proposed voir dire.

(1) Statutes disqualifying a prospective juror

Courts and Judicial Proceedings § 8-103(a) of the Maryland Code states that an individual qualifies for jury service for a county only if the individual:

1. Is an adult as of the day selected as a prospective juror;
2. Is a citizen of the United States; and
3. Resides in the county as of the day sworn as a juror.

Courts and Judicial Proceedings § 8-103(b) of the Maryland Code states that an individual is not qualified for jury service if the individual:

1. Cannot comprehend spoken English or speak English;
2. Cannot comprehend written English, read English, or write English proficiently enough to complete a juror qualification form satisfactorily;
3. Has a disability that, as documented by a health care provider's certification, prevents the individual from providing satisfactory jury service;
4. Has been convicted, in a federal or State court of record, of a crime punishable by imprisonment exceeding 6 months and received a sentence of imprisonment for more than 6 months; or
5. Has a charge pending, in a federal or State court of record, for a crime punishable by imprisonment exceeding 6 months.

(2) Collateral matters likely to have undue influence over a prospective juror

Examples of questions that may lead to answers that would disqualify a prospective juror based upon a collateral matter having an undue influence over a prospective juror are the following:

a. Do any of you have strong feelings about [the crime with which the defendant is charged]?

On request, a trial court must ask this question during voir dire. *Pearson v. State*, 437 Md. 350 (2014) (abrogating *Shim, Sweet and Thomas*).

Voir dire should not be asked in the form of "Does any member of the jury panel have such strong feelings about [the charges in this case] that it would be difficult for you to fairly and impartially weigh the facts?" as this improperly shifts responsibility to decide a prospective juror's bias from the trial court to the prospective juror. *Pearson* (abrogating *Shim*, 418 Md. at 54). ***Thus, the practice of simply asking during *voir dire* whether prospective jurors can be fair and impartial is improper. *Pearson*, at 1242.

Once the proper question is asked, a prospective juror is not automatically disqualified simply because the prospective juror responds affirmatively to the "strong feelings" voir dire question. Rather, after the prospective juror is individually questioned by the attorneys or on request by the trial court, the trial court must determine whether or not that prospective juror's strong feelings about the crime with which the defendant is charged constitute specific cause for disqualification. *Pearson* at 1240.

The requirement that there be the follow-up inquiry as to the effect of the "strong feelings" affirmative answer provides the necessary opportunity for the court and the parties to delve into the basis for the "strong feelings" so that the court has a proper basis for determining whether or not to excuse the juror for cause.

b. Have any of you ever been a member of a law enforcement agency?

In certain cases, a trial court on request must ask this during voir dire, such as where all of the State's witnesses are members of law enforcement agencies or where the basis for a conviction is reasonably likely to be the testimony of members of law enforcement agencies. *Pearson* (overruling *Davis*). In these instances, a prospective juror's experience as a member of a law enforcement agency has a demonstrably strong correlation with a mental state that could give rise to specific cause for disqualification. *Pearson* at 1242 citing *Curtin,* 393 Md. at 607 (citation and emphasis omitted). Thus, a defendant is entitled to know whether a prospective juror has worked in the law enforcement field if all of the State's witnesses and/or the witnesses whose testimony is reasonably likely to be the basis for a conviction are members of the law enforcement community.

Just as with the "strong feelings" question, a prospective juror is not automatically disqualified just because the prospective juror responds affirmatively to the "member of a law enforcement agency" voir dire question. *Pearson* at 1243. After the prospective juror is individually questioned by the attorneys or upon request by the trial court, the trial court determines whether or not the prospective juror's having been a member of a law enforcement agency constitutes specific cause for disqualification. *Pearson* at 1243.

c. Would any member of the jury panel be inclined to give either more or less weight to the testimony of a police officer than to any other witness in the case, merely because the witness is a police officer?

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VOIR DIRE, Cont'd

***Just because the trial court may have asked "Have any of you ever been a member of a law enforcement agency?" this does not alleviate the obligation of the trial court to ask the voir dire question asked by the circuit court in *Pearson*: "[W]ould any member of the jury panel be inclined to give either more or less weight to the testimony of a police officer than to any other witness in the case, merely because the witness is a police officer?" *Pearson* at 1242-43.

Placement of undue weight on police officer credibility is a discriminating factor, regardless of whether the defendant testifies. *Compare Langley v. State*, 281 Md. 337, 349 (1977) ("[W]e hold that in a case such as this, where a principal part of the State's evidence is testimony of a police officer diametrically opposed to that of a defendant, it is prejudicial error to fail to propound a question such as… whether any juror would tend to give more or less credence…[to a police officer].") *to Bowie*, 324 Md. at 7-10 (although Bowie did not testify at trial, and thus there was no testimony by a defendant that was "diametrically opposed" to the testimony given by the officers, the holding in *Langley* was nonetheless dispositive of the issues; credibility of witnesses is not an issue only when different versions of the events in question are specifically presented by opposing parties; rather, "whether, or not, a defendant elects to take the stand or to present evidence at all, it is still necessary to determine whether witnesses called by the State will start with a 'presumption of credibility' simply because of the positions occupied rather than the facts of the case.")

The witness occupation question seeks to uncover biases with regard to "police or other official witnesses" and therefore is mandatory in the situation where police officers or other official witnesses are expected to testify during trial. *Moore*, 412 Md. at 655. The possibility was left open whether other occupations could warrant a voir dire question designed to uncover biases held by potential jurors based on a witness's occupation. *Washington* 425 Md. at 322-323.

The right to these law enforcement questions is not automatic. Be prepared to proffer why the issue of law enforcement witnesses in the case and potential issues regarding law enforcement witness credibility make these questions relevant and appropriate to the factual circumstances of the case at hand.

d. Whether any prospective juror has had an experience, status, association, or affiliation?

On request, a trial court must ask this during voir dire if and only if the experience, status, association, or affiliation has a demonstrably strong correlation with a mental state that gives rise to specific cause for disqualification. *Pearson*, 86 A.3d at 1236 (2014).

The category or affiliation question seeks to uncover biases with regard to "official or non-official" witnesses called by the State or the defense. *Moore*, 412 Md. at 653.

This subset should not be subsumed within the witness occupation question above. *Moore*, 412 Md. at 666.

In *Moore,* the Court addressed a trial judge's refusal to ask "Would any prospective juror be more likely to believe a witness for the prosecution merely because he or she is a prosecution witness?" and "Would any prospective juror tend to view the testimony of a witness called by the defense with more skepticism than witnesses called by the State, merely because they were called by the defense?" *Moore,* 412 Md. at 642. Although *Langley* addressed police officer credibility, the core of the holding is whether a witness is more credible than another simply because of that witness's status or affiliation with the government and thus could implicate many more occupations and categories. *Moore*, 412 Md. at 649-50.

Thus, the heart of the issues presented in *Langley, Bowie* and *Moore* is whether it is appropriate for a juror to give credence to a witness simply because of that witness's occupation, or status, or category, or affiliation. *Washington*, 425 Md. at 319-20. But, in a situation where "no police *or other official witnesses* will be called by the State, the occupational, or status, question need not be asked." *Id*.

e. Whether any prospective juror has a bias against a defendant's race, ethnicity, or cultural heritage?

A prospective juror with bias against a criminal defendant's race, ethnicity, or cultural heritage is not qualified to sit on that defendant's jury and, therefore, a requested voir dire question designed to uncover such bias in a prospective juror is mandatory. *Hayes v. State*, No. 2684, Sept. Term, 2012 (Opinion May 1, 2014) at 9 (internal citations omitted). It would be reversible error to refuse to ask a requested voir dire question about racial basis. In *Hayes*, the defendant requested that the panel be asked "Mr. Hayes is an African American. Would that fact in any way impact your ability to be fair and impartial?"

Hernandez v. State, set the standard for asking these types of questions when requested: "Where a voir dire question has been properly requested and directed to bias against the accused's race, ethnicity, or cultural heritage, the trial court ordinarily will be required to propound such a question, regardless of the existence of special circumstances." 357 Md. 204, 232 (1999). Hernandez was Hispanic. He requested the following voir dire question: "Is there any member of the panel who would be prejudiced against a defendant because of any defendant's race, color, religion, sexual orientation, appearance, or sex?" 357 Md. at 206-07.

f. Whether any prospective juror has a bias against a defendant's religion?

VOIR DIRE, Cont'd

"[I]f the religious affiliation of a juror might reasonably prevent him from arriving at a fair and impartial verdict in a particular case because of the nature of the case, the parties are entitled to…have the court discover[…] them." *Casey v. Roman Catholic Archbishop of Balt.*, 217 Md. 595, 607 (1958).

Overall, it will be a fact specific determination that the trial courts must make. There are certain areas where, if directly related to the case before the court, inquiry is mandated during voir dire of a jury panel.

BUNDLING SENSITIVE OR HIGHLY PERSONAL QUESTIONS

The *Hayes* Court tells us that with respect to a question like race, this "does not concern an objectively verifiable non-controversial topic" but rather "is highly subjective, and not only that, calls upon the juror to whom the question is posed to make a personal self-assessment on a topic of great sensitivity. In today's world, a truthful yes answer to that question likely would be a source of embarrassment to the person giving the answer." *Hayes* at 11. Thus, the question should be bundled with routine voir dire questions. *Hayes* at 11.

This is not limited to questions of race, but obviously applies to how the voir dire process approaches any and all sensitive questions.

"[V]oir dire can be and often is structured to encourage honest answers to embarrassing, sensitive, or highly personal questions. On its own initiative or upon the request of counsel the trial judge can bundle those questions with routine questions, so a "yes" response by a venire member in front of the entire venire will not be revealing to the other potential jurors or anyone else present in the courtroom. Any '"yes" answer will result in the juror being questioned individually at the bench" *Hayes* at 10. Make sure the court lets the prospective jurors know that they will be asked a list of questions and not to respond to any until all have been asked. Only then will affirmative responses be taken. The "cover" is then provided for the prospective juror who needs to answer in the affirmative but does not want fellow prospective jurors to know the question to which the affirmative answer is being given.

THE ADVOCATE'S RESPONSIBILITY

The first consideration is to identify the significant issues in the case – and then to fashion voir dire that is relevant to the case at hand. Boilerplate voir dire is fine as a starting point – but not as an end product.

Remember, just because a question may not be one that has been mandated as a required question, does not mean the question is not appropriate. Many careful judges, who take the jury selection process seriously, will work with you to fashion questions that address pertinent issues in the case if you can persuade them that the questions are appropriate based upon the specifics of your case.

Second, do your best to ensure that the process cultivates honest answers in an atmosphere that is not embarrassing for the prospective juror. Get the juror to the bench to answer such questions. This happens as a matter of course as to most questions. Keep your antennae tuned, however, to the juror who responds in the affirmative to the question about whether he or she knows a witness and that witness happens to be a critical witness to the case. Don't let that answer be given in front of the other jurors. The answer may be innocuous or it may go to the heart of the issues of witness credibility – "I've known Mr. Witness for 20 years, seen him in church every Sunday and think very highly of him" – or it may be the opposite – "Mr. Smith is a rotten SOB." Similarly with respect to the answers about whether a witness has read or heard anything about the case, don't be asleep at the switch when an answer may taint the entire array. Get to the bench.

Third, listen carefully to answers and observe body language of the potential jurors. Get your head out of your notes. "Look and listen!" Have your client look for a juror's reactions as well and have your client let you know what he or she may have observed about the juror when you were not looking.

Fourth, don't be the proverbial "potted plant" during the voir dire process. Your role is to ask follow up questions if necessary. The *Hayes* Court tells us that "[d]espite the limited nature of voir dire in Maryland, counsel are not mere bystanders to the voir dire process…[and] may with permission pose follow-up questions[.]" *Hayes* at 10. Develop your own style of probing and also be respectful and attentive to the way your question may be perceived by the prospective juror. If you already know the prospective juror is not getting on the jury because you will use a preemptory challenge if you cannot get the juror excused for cause, then you may be ok with being a little more aggressive and pushy in trying to get the prospective juror to answer a question that may provide a basis for a challenge for cause. Otherwise, don't start off with creating a bad impression with a juror who may be on your panel by the manner in which you ask follow-up questions.

Fifth, as with so many aspects of a criminal case, preserve the record. Note your objections. Note your dissatisfaction at all appropriate stages. If your requested voir dire has not been asked, if you challenge for cause has been denied, if other objections have been made during the jury selection process – don't ever tell the judge that you are satisfied with the voir dire if all your questions have not been asked or if your challenges have been overruled. Later, when the jury is in the box and you are asked if you are satisfied with the jury, make it clear that any satisfaction is subject to and without waiving your prior objections. Review the cases where issues regarding jury selection have been deemed not preserved because at the end of the

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VOIR DIRE, Cont'd

process counsel announced "satisfied" when asked if counsel was satisfied with jury as seated or empanelled. You have a number of chances to fail to preserve the record. Don't be a failure.

CONCLUSION

Remember the old saying – "it never hurts to ask." Think about what to ask, ask it and if it is not asked, preserve it. Advocate for questions that will help the fairness of the process. To repeat, what is minimally necessary is not the same as "best practices." What is a little extra time when liberty and reputation and fairness are at issue? Here's to hoping that your trials occur in front of the "best judges" - those who not only do what is required but who also are willing to take the time necessary to ensure a fair trial, a fair jury and that the litigants' positive perception of our system of justice is underscored by a fair and deliberate jury selection process.

Robert C. Bonsib, Esq. is a partner at MarcusBonsib, LLC and Chair of the PGCBA Federal Practice Committee and Megan E. Coleman is an Associate at MarcusBonsib, LLC in Greenbelt, MD and both concentrate their practices in the defense of state and federal criminal matters. Email: robertbonsib@marcusbonsib.com – megancoleman@marcusbonsib.com

Website: robertbonsib.com

Thank You!

On behalf of Judge Nyce and Ben Rupert the Prince George's County Bar Association would like to thank all of the presenters who participated in the Brown Bag Lunch and Law Practice 101.

It was a very fruitful Bar year thanks to each of you!

Seventh Judicial Circuit of Maryland

COURT HOUSE
UPPER MARLBORO, MARYLAND 20772

SHEILA R. TILLERSON ADAMS
SEVENTH CIRCUIT ADMINISTRATIVE JUDGE
COUNTY ADMINISTRATIVE JUDGE

(301) 952-3766

May 13, 2014

Prince George's County Bar Association
14330 Old Marlboro Pike
Upper Marlboro, Maryland 20773

Re: Name Change for Family Law Masters

To Prince George's County Bar Association Members:

Effective immediately, please be advised that the Judicial Cabinet has adopted the recommendations of the Conference of Circuit Judges to change the name of the Family Law Master to Family Magistrate.

Please note, that the name change from Master to Family Magistrate will require forms being changed, signage being updated, as well as changes to the Maryland Rules that reference Masters. These changes will take some time to fully implement and your patience is appreciated. Signage will be updated throughout the courthouse and our website has been updated as well.

Sincerely,

Sheila R. Tillerson Adams
Administrative Judge
Prince George's County and the
Seventh Judicial Circuit

SRTA2014-0090

J. Franklyn Bourne Bar Association and The Prince George's County Bar Association Golf Classic
May 13, 2014

J. Franklyn Bourne Bar Association and The Prince George's County Bar Association Golf Classic
May 13, 2014

Interview with Bobby Gailes, Radio Host from WHUR and Judge Joseph Wright

Thank You!

The Prince George's County Bar Association and the J. Franklyn Bourne Bar Association would like to thank the Golf Committee, volunteers, Bobby Gailes, Radio Host from WHUR, and all of the sponsors especially Clay Goldsborough and First Financial Group for a very successful Golf Tournament that will provide funds to two worthy causes, the J. Franklyn Bourne Scholarship Fund and Operation Homefront.

LAW PRACTICE 101

May 8, 2014

"THE BEST OF LAW PRACTICE 101 - CIVIL & CRIMINAL RULES & EVIDENCE - Q & A's"

Speakers: Judge Lawrence Hill, Judge Leo Green, Judge Joseph Wright

Moderator: Judge Eric Nyce

Law Day and Naturalization Ceremony Conducted by Judge C. Phillip Nichols

On May 1, 2014 the Prince George's County Circuit Court celebrated Law Day with an INS Naturalization Ceremony.

Family Law, Matters: "Family Magistrate Eason's Suggestions on How to deal with 'Land Mines' in Custody Cases" | *by Magistrate Paul Eason*

First Rule---Don't step on them. That is Job One in your role as the attorney. You are tasked to lead the client through the mine field unscathed. You are supposed to be thoroughly familiar with the terrain and, "the lay of the land." This is what you do for a living!

Second Rule--- Don't over promise. If, during the course of your detailed interview, it becomes apparent that your client doesn't know the children's birthdays, shoe sizes, where they go to school, the name of their pediatrician, teacher, school principal, day care provider etc.—be upfront and inform the client that they are not going to be awarded primary physical custody.

Third Rule---Be able to distinguish a real custody dispute from a child support case. This should be readily apparent when your client states, "At a bare minimum I want joint custody and no less than 128 overnights." In this scenario, run both Guideline Worksheets as, the primary physical custodian may agree to the lessor sum to avoid the "bogus" custody battle.

Fourth Rule---Make sure the client understands joint legal custody does NOT mean 50/50 shared physical custody.

Fifth Rule---DO know the *Taylor* factors and how to rebut the assertion that, "I can communicate but s/he can't." Joint legal custody should never be awarded to parents required to use the Safe Visitation Center, have Protective Orders in place, "block" each other's calls, exchange their children at a Maryland State Police Barrack, and/or have pages of text messages and e-mail exchanges that are full of profanity, insults and threats. From my perspective, there should be no such thing as "aspirational" joint legal custody. It is wishful thinking and generates many avoidable contempt petitions. I tell disgruntled litigants, once their communication improves, I will re-consider my ruling.

Sixth Rule---DO NOT bring children fourteen years or younger to speak with the Judge/Master. I have lost count of the number of times children tell me things that are totally at variance with what the parent expects them to say! Advise the custodial parents that as painful as it may be, many teenage boys/young men express a desire to live with their father during adolescence. Similarly, many teenage girls/young ladies desire to live with their mothers during adolescence.

Seventh Rule---Eliminate the land mines by a thorough mastery of the facts of your case. Propound interrogatories, document requests and sensible Requests for Admissions of Fact,--("Admit that you are an intelligent person," is a silly request. "Admit that you declined/refused to sign an Affidavit of Paternity at the hospital," is an appropriate request.

Eighth Rule---Know and be prepared to address your client's weaknesses and vulnerabilities. Nobody is perfect. But, since "character and reputation of the parties" is a factor in deciding a custody dispute, I would advise that the derogatory information should be elicited on direct examination, unless, of course, your opponent has done no discovery and in all likelihood is oblivious to the questionable conduct.

Ninth Rule---If a Custody Evaluation or Home Study has been ordered, DO NOT wait until the day of trial to read it. If the report is not ready until the day of trial, arrive two hours early so the contents of the report can be discussed and corrections made. If drug testing has been ordered, it is absolutely malpractice to not know your client tested positive for PCP and cocaine. You should also know whether one or both parties did not complete parenting classes and/or attended mediation.

Tenth Rule---Memorize all of the relevant factors contained in *Montgomery County Department of Social Services v. Sanders*, 38 Md. App. 406, 381 A.2nd 1154 (1978). Remember, in the final analysis it is what parents have done that is far more persuasive in determining custody than what they say they will do!!

Paul Bauer Eason is a Family Magistrate in the Circuit Court for Prince George's County. Prior to his appointment in 2007, he was a solo practitioner for 24 years.

Family Law Seminar
May 3, 2014

Thanks!

The Prince George's County Bar Association would like to thank all of the CLE organizers, presenters, and participants. The Wills, Trusts & Estates, the Goldstein, the Family Law, and the Tort Seminars provided a wealth of real time knowledge on topics to advance our areas of practice. Thank you, Thank you, Thank you!

Prince George's County Bar Association and Maryland State Bar Association Expungement
May 3, 2014

Thank all of you who helped with the expungement events this past bar year. We helped many people fill out expungement petitions or give them legal advice about expungement. Without your help an event would not have been possible. Your sacrifice of time and knowledge is greatly appreciated most of all by the people we helped. Please look forward to more expungement events next fall.

PRINCE GEORGE'S COUNTY BAR ASSOCIATION'S
TORT LAW COMMITTEE PRESENTS

EFFECTIVE USE AND CROSS-EXAMINATION OF EXPERTS FOR CIVIL TRIALS

June 10, 2014
(Prior to the June Annual Meeting)
4:30 p.m.
Newton White Mansion
2708 Enterprise Road, Mitchellville, MD 20721

SPEAKERS
Robert V. Clark, Jr.
Thomas Doran
Robert Zarbin
Giancarlo M. Ghiardi
Guest Speakers: Dr. Michael Franchetti, M.D. and Dr. Jerome Reichmister, M.D.

Topics: Qualifying the Expert; Tips for Video Depositions; Permissible Impeachment; Strategy for Direct and Cross-exams; Impact of Falik Court of Appeals Decision; Medical Malpractice Update and Motions to Exclude/Limit Testimony

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CLE and Annual Meeting Joint Price: $75.00 for Members; Non-Members $85.00
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Annapolis or Bust: The Story of One Prince George's County Public School's Journey in the State Mock Trial Competition

by Bryon S. Bereano

You spend weeks preparing your big case, polishing your arguments, checking your evidence, honing your presentation. Now you have to finish your homework, wash dishes and take out the trash all before going to bed. I could be describing a trial attorney, but in reality, this is a day in the life of one of the 56,000 high school students throughout the state of Maryland who participate in the Maryland Citizenship Law Related Education Program's Mock Trial Competition that, in its 31st year, runs from November through April. This is the story of one Prince George's County public school, Eleanor Roosevelt High School's journey through the competition.

For the 2013-2014 Mock Trial year, 131 Schools from across the Eight Judicial Districts of Maryland competed in this year's Mock Trial competition. Eleanor Roosevelt High School competes in Circuit 7, which includes 32 teams from Prince George's County, Charles County, Calvert County and St. Mary's County. Circuit 7 is the second largest circuit, behind Circuit 6 which includes Montgomery and Frederick Counties. Teams in Circuit 7 compete in four (4) regular season matches held at the schools where the home team is the Plaintiff (Prosecution) and the road team is the Defense. After the regular season matches are completed (which was no easy task this year thanks to the Polar Vortex) the sixteen (16) teams with the highest total team scores move on to the playoffs, where in an NCAA tournament bracket style competition, an eventual Circuit 7 champion is crowned. The eight circuit court champions travel to neutral site courthouses across the state for the quarter-finals. The winners advance to Annapolis for a great two day event where the semi-finals are held and all teams are invited to a dinner, breakfast the next day and an invite to watch the state title match which is held at the Maryland Court of Appeals.

Great care is taken into crafting each year's case. All 131 teams get the same case which is used in each competition throughout the year. There are three (3) parts for attorneys and three (3) parts for witnesses for both Defense and Plaintiffs; twelve (12) parts total. Some teams keep the same attorneys for both Plaintiff and Defense and some, like Eleanor Roosevelt, use twelve students to fill each of the roles. This year's case was a civil suit based on negligence against a concert venue and its security guards. The allegations where that a young concert goer who was slam dancing and crowd surfing, was involved in an incident with security guards and at the end of that incident severed ligaments in her neck that rendered him/her a quadriplegic. The students had to deal with such advanced concepts as negligent hiring and training, contributory negligence, Re Ipsa Loquitor and the "last clear chance" doctrine. Teams are judged on their performance as lawyers and witnesses and the team with the highest overall score, without regard to which side the judge would have ruled in favor of, wins the match.

The Mock trial program at Eleanor Roosevelt High School is a voluntary after school activity. While many students at private schools get to practice for the competition as part of a regular curriculum, practice at Eleanor Roosevelt requires after school attendance at a twice a week practice. Students must try and learn the material and master the nuances of trial, while also dealing with their regular homework and any other after school activities they participate in.

It's late January and the mock trial season has started. Eleanor Roosevelt has been seen as a team on the rise for a couple of years now. The team has made the playoffs the prior five seasons, unfortunately never advancing out of the second round. This year's team, led by four senior attorneys still has the bitter memory of a one point loss to DeMatha from the prior year. The regular season schedule is difficult. The first two matches are home matches and the second two are away which means that the Defense has to essentially wait a month before they get a chance to put on their case. It's a challenge trying to keep the kids focused when there is so much downtime between matches. The team performs well through the first three matches of the year, posting impressive team scores and working towards a good seeding in the playoffs, but they have one last obstacle in their way, their arch rivals and perennial Circuit 7 finalists, Bowie High School. On the road and in hostile conditions (well, at least in Bowie's library), Eleanor Roosevelt pulls out an impressive victory and readies themselves for the playoffs.

The playoffs are where things start to get intense. They are held in actual courtrooms in the Circuit Court in Upper Marlboro. Circuit and District Court judges grade the teams without knowing who is on either side and the strategy is simple; win and advance. The first round features a matchup with a school from Calvert County. In the playoffs you have the added surprise of props being used. Enlarged exhibits and plastic spoons symbolizing the victim's neck appear as demonstrative evidence. But no matter, Eleanor Roosevelt has a junk yard dog mentality. Their presentation is not flashy but there is a lot of substance. The lawyers and witnesses stick to a common theme and a first round victory is achieved. In the second round, Roosevelt takes on the top seeded Wise High School. In a very close match, Eleanor Roosevelt prevails to advance out of the second round for the first time in the school's history. The win also resonates with the other teams competing as Wise was seen as one of the favorites to win the Circuit.

Now the pressure really is turned up. Parents, school officials and county

administrators are in attendance at the matches. The kids have rehearsed their parts a hundred times but the most important thing is to find a room so that we can do our pre-game cheer for good luck. After a victory in the semi-finals, Eleanor Roosevelt faces St. Mary's Ryken in the finals. St. Mary's has an impressive history in Circuit 7 having won the playoffs several times and made it to regionals. The match is back and forth. Nerves on both sides are evident and this time the kids are arguing in front of a three judge panel. To make matters worse, after closing arguments but before a decision is made, a reception is held for the students with dinner and dessert. (It's a really nice reception that is put on by the Prince George's County Mock Trial Committee). The anticipation of knowing who won and who will be representing Circuit 7 at the regionals is palpable. Well, maybe not for the kids, many of whom are enjoying their second piece of cake, but it certainly is for the adults. When the results are announced the crowd is stunned! Eleanor Roosevelt advances to the regional competition for the first time in its school's history. After many congratulations and logistics are discussed it is back to business. The students are the County's representative to the state competition and they do not want to let Circuit 7 down.

Eleanor Roosevelt is assigned to face a school out of Wicomico County at the Circuit Court in Baltimore County. The win streak continues as the students overcome a slow start to earn their ninth victory of the year. The victory means that Eleanor Roosevelt has made it to the semi-finals. Annapolis at last. They are guaranteed to stay overnight as the semi-finals are held on a Thursday evening, followed by a dinner and reception for all four teams and then the finals in the Court of Appeals the next morning. We learn that our semi-final matchup will be against The Park School. A private school out of Baltimore County that won the state competition two years in a row back in 2010-2011 and 2011-2012. Some of their current team were members of the back to back title winners.

The match takes place in the Circuit Court for Anne Arundel County. Eleanor Roosevelt starks off slow as they get used to the pressure and their environment but they finish on a very strong note. The Park School hands the students their first loss of the year. It was clear that the experience that Park School had in being in the semi-finals before made them more comfortable and at ease during the competition. However, the students from Eleanor Roosevelt gave everything that they had and represented Circuit 7 and Prince George's County Public Schools system well. It is the adults who take the loss the hardest as once again the students enjoy the dinner that night, making sure to stock up on desserts before they get to their main courses. The kids are resilient and the discussion turns to lesson to be learned and what to look for in the championship match and what can be applied to the next year. With eight returning team members and a new target on their back, as the Circuit 7 Champions, the 2014-2015 season will be full of new challenges and new greater expectations.

Get Healthy Today | *by Edith Lawson-Jackson*

STAYING HEALTHY WHILE TRAVELING

Summertime vacations are particularly notorious for sabotaging all the hard-earned fitness you've acquired after your New Year's Resolution and "getting ready for Spring" exercise and nutrition campaign. But summer vacations and other business travel doesn't have to derail your fitness efforts. With proper planning and some important information that I'm about to give you right now, you can do all the vacation and business traveling you want, without compromising your healthy lifestyle habits. You can even plan to vacation, and come back feeling more energized and possibly even more fit.

First things first - no matter where you travel, you can incorporate exercise, especially if you're traveling to the beach. During travel to tropical or sunny destinations, explore the city on foot, walk the beach each morning before breakfast, play beach volleyball, or go on snorkeling and/or hiking excursions. You'll have so much fun engaging in these activities, you won't even feel like you're exercising. I like to go out first thing in the morning and find a destination at the other end of the beach that takes me about 15 minutes to walk or jog to each morning. Once you get to that destination, you have to get back right? Well there you have it. By ten a.m. you've already easily finished a 30 minute cardiovascular workout to start your day.

Not going to the beach? That's fine. Destinations such as Arizona have opportunities for hiking in addition to the spas. Southern cities such as Florida will have parks and nature trails that you can bike or walk. Even metropolitan destinations have great opportunities to get in your exercise in a fun and exciting way. Almost every city has a great staircase or stadium where you can hit the stairs (pretending you're Rocky). And if getting outside to exercise just isn't your thing, be sure to call ahead and book a hotel that has a workout facility. If there's a gym at your hotel or resort, there's really no excuse for not getting in at least 30 minutes of exercise every day of your vacation. Hitting the gym for 30 minutes first thing in the morning is the best way to energize you throughout the day and to make sure you're alert and clear-headed for meetings, if your travel is business related. Or if you have early morning meetings and stressful day-long classroom sessions, 30 minutes of cardio and a fifteen minute stretching session (especially if you throw in a few yoga poses) is an excellent way to unwind and bring your stress levels down in the hotel gym before hitting the hay.

So you're a late riser, you say, and your hotel has no gym, and to make matters worse, by the time you're done your business activities, it's too late to get outdoors and exercise. Have no fear, there are great "in-room" exercises you can do that will get you back home feeling like you didn't miss a beat. All you need is a jump rope and a pair of lightweight dumb-bells or an exercise tube. Exercise tubes and jump ropes are very light weight and easy to travel with. You can find these items at a Target, Ross, Bed, Bath and Beyond, and at any exercise store and they are very inexpensive items to purchase.

Now for the in-room exercises….. jump rope in your room for 2 minutes alternating with dumb bell or tube or body weight exercises for 5 consecutive intervals and you'll have gotten in an excellent workout that incorporates both cardio and weight training. For example, jump rope for two minutes then do a combination of dumbbell squats and shoulder presses for 15 repetitions. Then jump rope for two more minutes, followed immediately by bicep curls for 15 repetitions. Jump rope for two minutes and then do pushups (or modified pushups) for 15 repetitions. Jump rope for two minutes followed by 25 abdominal crunches. Then, as your last interval, jump rope for two minutes followed by a combination set of bent-over dumb bell rows with triceps kickbacks. You repeat this entire cycle one more time, and you've gotten in a great workout in about 30-40 minutes. Trust me when I say your heart will be pumping and you'll break a mild sweat. And the best thing about this type of "in room" workout is that you can even do it while watching TV! No jump rope…well substitute jumping jacks or "burpies" for the two minutes of jump rope time.

Now that you know how to get in your exercise in fun (or at least non-painful) ways, the other part of hitting the road without packing on the pounds consists of knowing what you should and shouldn't eat. First off, there's NO place where you can't eat. Smart meal choices can be found everywhere nowadays. Let's start with getting to where you're going. Flying? Not a problem. The key to getting off on the right foot when flying is to stay hydrated. Drink a liter of water if possible before you get on the plane. Long flights can dehydrate you and cause swelling and water retention. Although it sounds oxymoronic, drinking lots of water actually prevents you from retaining water. So skip the cocktail. Once on the plane, opt for water whenever your flight attendant offers you beverages. Snacks anyone? If you have a choice between cheese and crackers, pretzels, or peanuts, always choose the peanuts. They have the least amount of carbohydrates and "bad" fats of all the choices. Plus they have the protein that your body needs to preserve its muscle. But an even better idea is to pack fruits such as sliced oranges and apples along with healthy snack bars such as Fiber One, Atkins, or Special K Protein bars. Unlike beverages, you can get these past security and onboard.

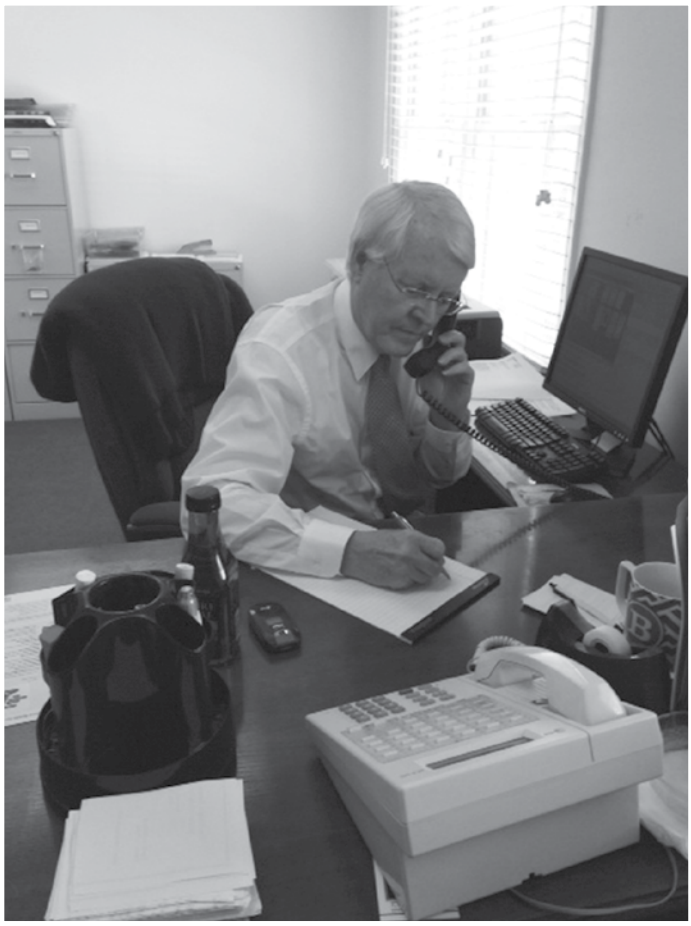
Taking a road trip? Kids want to stop at McDonald's? Not a problem. But here are the "must follow" rules: when given the choice of a burger and fries versus a grilled chicken sandwich versus a grilled Chicken Ceasar salad, choose the salad.

It'll keep you satisfied for a couple hours which is all you need before it's time for you to eat again. What's wrong with the chicken sandwich you might ask? The bun is packed with carbs that have hardly any nutritional value. So if you don't mind pulling off the bread, you can even have the grilled chicken sandwich. You say the spouse wants to stop at Starbucks for some caffeine? That's okay, too. Just be sure to make your drink either a skim or a skinny version and if you're tempted by their edible treats, try either the fruit salad, the fruit and yogurt cup, or the turkey and Swiss sandwich which is quite delicious and provides 26 grams of protein.

Are you going on a trip that will require you to be away from healthy food options for several hours? Perhaps it's a business convention where all that's available is what you can find in vending machines or the pastries and croissants served in the reception area? Well don't pack M&Ms to take with you. There are much healthier portable meals that can be carried in your purse or briefcase. Nowadays you can find easy-to-open packages of chicken, tuna, and even salmon in grocery stores and places like Target. An easy to open envelope of white Albacore in water provides a whopping 41 grams of protein and only five grams of "good" fats and only 220 calories. You can spoon this onto your plate during lunch break or take a quick trip to your room to eat in private. Heck, this is such a healthy food choice, you could even stand to put it on crackers and have a pretty good meal. These type of on-the go, easy to eat meals are also perfect to pack when you go hiking, skiing, on a short boat cruise, or even to keep in the supply cabinet at your workplace. And when you tire of fishy choices, grab your Fiber One peanut butter bars, a pack of instant Quaker Weight Control Oatmeal (I've asked for hot water on a plane and eaten this as a great satisfying meal) or fresh fruit. All of these are portable, healthy, excellent meal options when on the go. Just remember to pack enough to consume one of these "mini-meals" about six times each day, or every 2-3 hours.

There's no reason you have to come back from vacation looking and feeling like you've just come back from a cruise. Challenge yourself. Find fun activities to engage in everyday. Always take the stairs up to your hotel room. Walk the beach each night after dinner, explore the city on foot. You'll be amazed when you return home and step on the scale to see that you've actually gotten trimmer while on vacation.

Law Day - Legal Advice Line at the Prince George's County Bar Association



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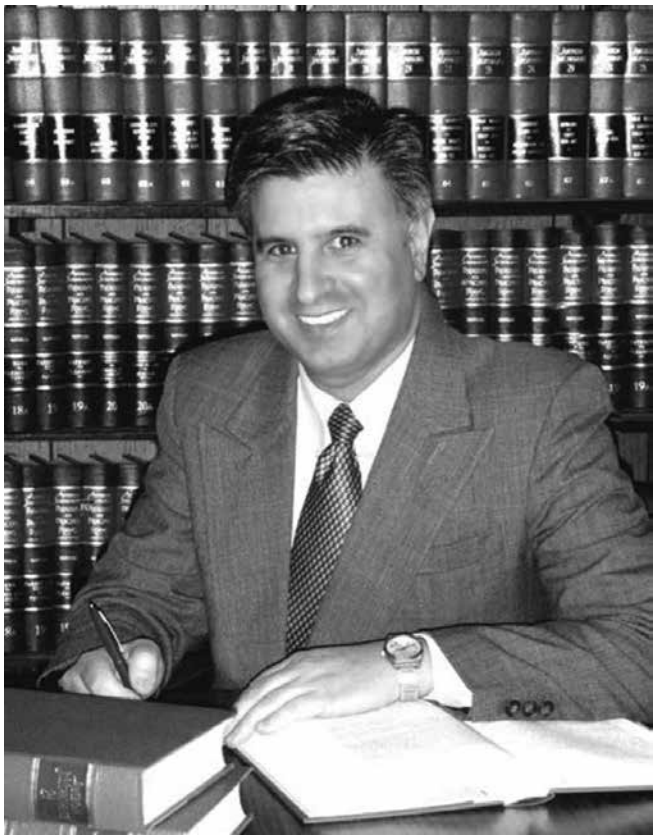

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