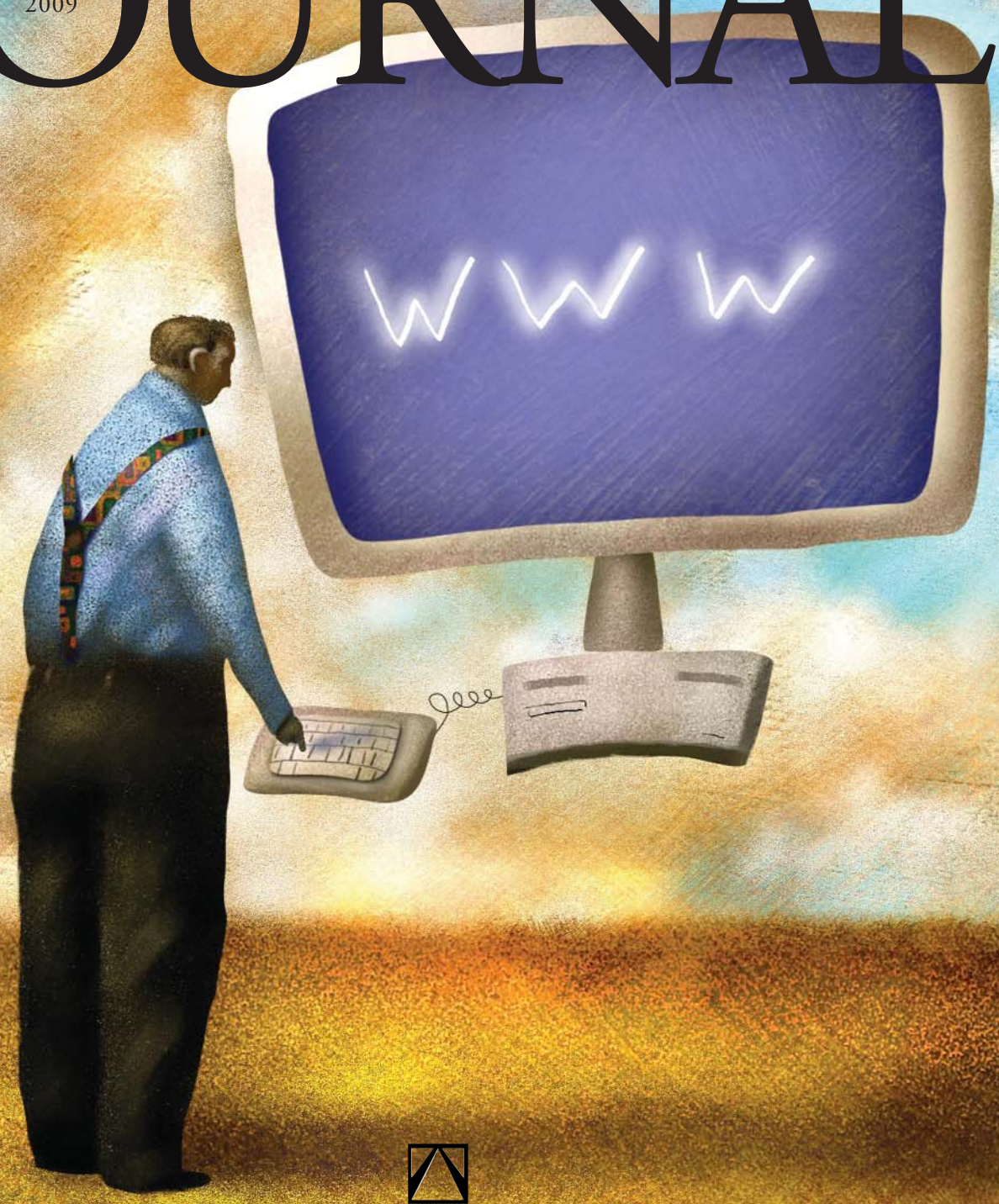
THE NORTH CAROLINA STATE BAR

JOURNAL

FALL
2009



IN THIS ISSUE

Avoiding Ethical Traps for Law Firm Websites

By Mike Dayton

The internet is widely acknowledged to have been born in 1969, the year of Woodstock. However, not until the 1990s did the internet capture the imagination of the general public. The rapid rise in online users during that decade made it an inevitable marketing avenue for law firms.


Dave Cutler/Images.com

Law firm websites made their first formal appearance on the State Bar's ethics radar in 1996, when the Ethics Committee issued RPC 239 (October 18, 1996). That opinion ruled law firms could display information about their firms on a "world wide website on the internet." The Bar concluded that many of the same ethical rules that govern print ads or radio and television commercials also applied to online marketing efforts. The current provisions are contained in Rules 7.1 through 7.5.

The online world continues to create new ethical challenges, and the Bar has done its best to keep pace through its rules and ethics opinions. If your firm is now online, here are some pointers to help you avoid ethical headaches.

Just the facts, Jack. Be sure that what appears on your website is factually correct. Rule 7.1, the guiding star for lawyer advertising, states that "[a] lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services." A communication is deemed to be false or misleading if it "...contains a material misrepresentation of fact or law...." It is the seemingly innocent factual statement, not the questions of law, that may cause problems, according to one Bar official. Suppose your site states: "We answer all of our phone calls within 24 hours." Your firm may be able to demonstrate this is true if you use an around-the-clock answering service. Even so, be careful about making statements like that unless they can be verified.

If you include video clips, or even photographs that portray fictional persons or events, be aware that the same rules that apply to written text also apply to visualizations. For instance, if your website video is a dramatization, you must say so. *See* Rule 7.1(b). Avoid images, such as the handing over of a million-dollar check to a client, that might create unjustified expectations.

Avoid implied comparisons. Rule 7.1 states the comparison of a lawyer's services with those of his or her colleagues may be

considered false and misleading "unless the comparison can be factually substantiated." Thus, a statement such as "service is our #1 objective" is not likely to raise objections, but eyebrows may be raised when you proclaim, "we are North Carolina's most experienced law firm in food poisoning claims." Perhaps your firm has handled a class action and represented 10,000 plaintiffs nationwide. But that statement invites comparison with other firms. If you can't back it up, think twice about including it on your site.

Take a close look at client endorsements. Quotes from satisfied clients may be the very thing that convinces a new client to sign up with your firm. That's why so many firms include them on their websites. General or "soft" endorsements typically do not raise ethical questions—for example, "XYZ Law Firm treated me with respect" or "They answered my phone call immediately" or "I needed help and they were there." The more specific endorsement of "XYZ Law Firm got me $300,000 for my car accident" is skating on thinner ice. The problem is one of unjustified expectations. Comment 3 of Rule 7.1 states: "An advertisement that truthfully reports a lawyer's achievements on behalf of clients or former clients may be misleading if presented so as to lead a reasonable person to form an unjustified expectation that the same results could be obtained for other clients in similar matters without reference to the specific factual and legal circumstances of each client's case."

Rules about "no fee unless we recover" statements. Lawyers who handle personal injury matters on a contingent fee basis frequently include no-recovery, no-fee statements on their websites. Under ethics ruling 2004 FEO 8, statements like those may be potentially false or misleading if you don't charge a fee when there is no recovery but clients still have to repay costs. The bottom line from that ruling: "If the lawyer does not invariably waive the costs advanced, the advertisement must state that the client may be required to repay the costs advanced regardless of success of the matter."

Know your Super Lawyer rules. Congratulations—you've been named a Super Lawyer. Under 2007 FEO 14, you can advertise inclusion in a Super Lawyers listing on your website, subject to a few simple guidelines. Most importantly, do not simply state you're a "Super Lawyer" as that could be seen as an unsubstantiated comparison prohibited by Rule 7.1(a). Instead, make it clear the Super Lawyer designation is a listing in a publication by indicating the publication name in a distinctive typeface or italics, include the year you were honored, and link to the criteria for inclusion on the Super Lawyer website.

A word about advertising verdicts and settlements. For potential clients seeking an attorney, there may be no better selling point than your firm's past successes. The Bar is still sorting out the guidelines on this issue. In 2000 FEO 1, the Bar's Ethics Committee concluded that the posting of verdict and settlement amounts on websites had the potential to create an unjustified expectation about the results a lawyer could achieve. In 2000 FEO 1, the Ethics Committee ruled that putting verdicts or settlements in context lessened the likelihood that a website visitor would be misled. But the context requirements proved difficult to

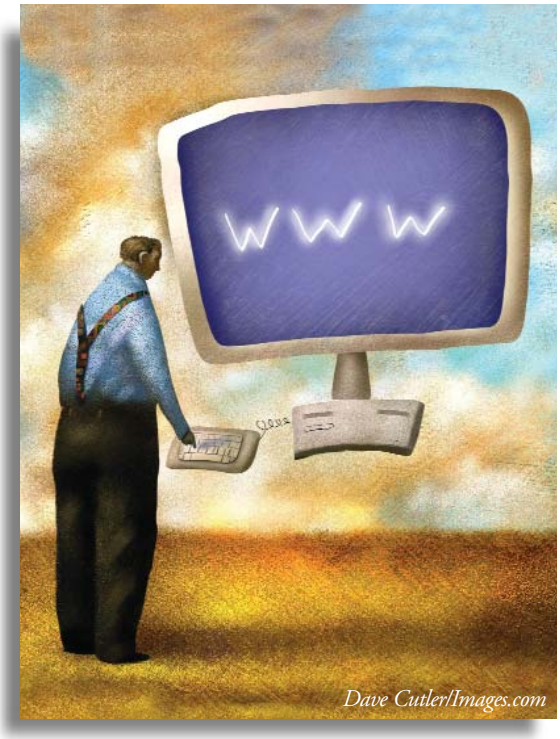
CONTINUED ON PAGE 12

Social Networking—Blogging, and Facebook, and Twitter, Oh My!

By Michael Duncan

This article on using social networking to market a business was not written specifically for lawyers. Although the advice is topical and useful, lawyers are reminded of their paramount duties under the Rules of Professional Conduct. The prohibitions on in-person solicitation and targeted mail may, in particular, limit the use of social networking for marketing a law practice. Before engaging in social networking as a marketing tool, contact ethics counsel at the North Carolina State Bar for advice.

Facebook, Twitter, blogging…in the past year, these social networking tools have shifted from kid stuff to major marketing tools. If you're wondering how to use these tools to connect with potential clients, you're not alone.



Dave Cutler/Images.com

Social media is an easy way to connect with people on a personal level. If your website serves as your online business card, then social media can be a form of online greeting card, providing you with a more personal presence on the internet and allowing you to interact with clients individually.

When done properly, social media is a fun, targeted way to reach your audience on a personal level with a wide range of positive results for marketing, search engine rankings, and traffic.

Don't stumble blindly into social networking for your business. Whether you're blogging or using social networking sites like Facebook and Twitter to connect with your clients, you need a strategy. Decide what you want to accomplish through social media. Connection with customers? Web site traffic? Reputation management? Your ultimate goal will determine the tactics you use and the networks you join. Here's a basic overview of the most popular methods and how to use them.

Blogging

If you want to inform your customers with industry and company news and you're prepared to devote time to quality content development, then you should start a blog. Adding a blog to your website provides a personal voice to your business and allows you to offer your audience useful information. It can even help your website rank better in search engines. It's also the most time consuming method of social media and the most difficult.

Before starting a blog, come up with a plan. What kind of information do you want to provide to your visitors? Will you have time to write original content for your blog several times a week? Are you or someone on your staff comfortable enough writing to develop quality content? If the answer to these questions is yes, then a blog is a perfect start for your social media campaign.

The key to building a successful blog isn't promotion; it's quality content development. Your blog is not the place to sell your services. It's a place to share information that is helpful and interesting to your readers. Promotion can help you build a network, though. Promote your blog to your client base by adding it to your email signature, website, and promotional materials. Connect with other bloggers in your industry by linking to them, commenting on their posts, and submitting your content to social

bookmarking sites like Digg and StumbleUpon. Just remember, focus on the content to keep readers coming back for more.

If you're ready to build your blog, keep these guidelines in mind: don't blog from an outside website like WordPress or Blogger. Your blog should be a part of your website (http://www.yourdomain.com/blog), not part of an outside website (http://yourdomain.blogspot.com). By placing the blog on your website, you're placing all of the content from your blog directly on your site. Search engines love websites that are updated frequently, so blogging directly on your site allows you to reap the search engine benefits of keyword-rich blog content. Write fresh, original posts regularly (at least three times a week), and try to keep them under 500 words each for better readability for your visitors.

Facebook

If you want to create a social media hub for your business with content, photos, video, and networking capabilities, a Facebook page is what you need. Facebook is the largest social network on the web. The website boasts more than 200 million active users with more than half of them logging on at least once a day. And it's not just kids, either. More than two-thirds of users are out of college, and the fastest growing demographic is 35 years and older. If you're not already a part of this huge community, now is the time to join.

The way Facebook differentiates between people and businesses can be confusing. Facebook does not allow businesses to build personal profiles. You have two options for promoting your business: building a business profile page and creating a group for your business. Use the page as a central hub for information about your business on Facebook, and use the group as a forum where fans and friends can interact with you and each other.

Remember, profiles are for people; pages are for businesses. Your business page will need to be connected to a personal profile if you want to reap all of the benefits of Facebook. Build your personal profile first, and keep it business appropriate. Then connect a business page to your profile.

Facebook is people oriented. The only way it's going to work is if you're willing to get involved in the conversation. Build a personal profile, seek out friends in your target audience, and participate in groups related to your profession.

For more information on Facebook pages, read Facebook's help section for businesses at http://www.facebook.com/advertising/#/advertising/?pages.

Twitter

To converse with your customers and monitor what they're saying about you in real time, consider Twitter. Twitter (http://www.twitter.com) has quickly grown to become one of the most powerful social networking tools on the web. According to data compiled by Neilson Online, Twitter reaches more than 13 million people in the United States each month. It's also the social networking tool that many novices have the hardest time using. Twitter allows users to broadcast short, 140-word messages to other users who "follow" them.

It's no use if your target demographic isn't using Twitter. Do some research to

determine if you can reach your audience through Twitter. Use Twitter Search (search.twitter.com) to find people talking about your products or services. TweetScan (www.tweetscan.com) notifies you when your services or keywords are mentioned on Twitter, and Twollow (www.twollow.com) allows you to auto-follow people who are talking about your services. For instance, if you specialize in traffic violations, you should set a TweetScan alert for relevant keywords such as "speeding ticket" in your area. Using Twollow, you can automatically follow users who are talking about traffic violations. Following them will get you noticed, but they'll only follow back if you're sharing interesting information, so don't wait until you have a network to start tweeting.

Initiate conversation about your industry, offer tips, listen to what people are saying about your company, and be proactive in responding to @ replies and direct messages. Offer information that customers and other people in your network will find interesting—not just marketing and PR speak. Don't toot your own horn too much, or bombard users with links and repetitive marketing messages. Just like any conversation, these common mistakes will make you boring or annoying to followers.

This is by no means a complete list of social media sites that can help promote business. There are hundreds of other sites and social networking tools. Social media marketing is like any other marketing: different tactics work for different businesses.

Spend some time exploring these websites to determine if they can work for you. Come up with a strategy for how to implement these tools and integrate them with your current marketing efforts. Be sure you're using a network that your target audience is using.

If you're unsure of where to begin, internet marketing consultants can help you come up with a strategy, set up your profiles, and learn to use these tools effectively, but in the end your success depends on your engagement. Designate someone within your company as the online "face" of your brand. Social media works best when it's used to connect people with people. Use a real person as the online persona of your brand instead of a faceless logo. Your online profiles are an extension of your company, so make sure your company's online persona positively represents your brand.

After you've developed a strategy, built your profile, and joined a network, all that's left is the conversation. Initiate conversation with your customers about your industry and your brand, listen, and respond promptly to @ replies, blog comments, wall comments, and direct messages. Avoid excessive marketing and promotion of your brand, contribute to the community, and be interesting! ■

Mike Duncan is the CEO and creative director of Sage Island, a Wilmington marketing agency. Sage Island began as a custom programming company, but quickly expanded into commercial web design and eventually full-service marketing. Today, Sage Island has built a strong reputation through award-winning designs, brand strategy, and internet marketing services, including search engine optimization and pay-per-click advertising. Mike can be reached at mduncan@sageisland.com, www.sageisland.com.

Law Firm Websites (cont.)

meet. Among other things, firms were required to list favorable and unfavorable results within a specified timeframe, as well as the difficulty of the cases and whether there was clear liability.

This year, the Ethics Committee took a second look at the 2000 ruling. 2009 Formal Ethics Opinion 6, adopted by the Council on July 24, 2009, drops the most troublesome portion from the 2000 opinion—the requirement that favorable and unfavorable results be reported. The ethics ruling allows a case summary section on websites "if there is sufficient information about each case included on the webpage to comply with Rule 7.1(a)." The opinion states: "The summary should reference the complexity of the matter; whether liability and/or damages were contested; whether the opposing party was represented by legal counsel; and, if applicable, the firm's success in actually collecting the judgment. Providing specific information about the factual and legal circumstances of the cases reported, in conjunction with the inclusion of an appropriate disclaimer, precludes a finding that the webpage is likely to create unjustified expectations or otherwise mislead a prospective client."

Be clear when advertising your firm's age. It's not uncommon for lawyers in a firm to add their years of experience together as a marketing strategy. When a firm says "put our 30 years of experience to work for you," potentially you have three lawyers in the firm that have each been licensed and practicing for ten years. In ethics ruling 2004 Formal Ethics Opinion 7, the Bar declared it was misleading to advertise the number of years of experience of the lawyers with a firm without indicating that it was the combined legal experience of all the lawyers. The solution is an obvious one—simply state you're talking about "combined legal experience" when you total the years of practice of the firm's attorneys.

Register your trade name. Rule 7.5(a) permits a law firm to use a trade name, provided it doesn't imply a connection to a government agency or a charitable legal services organization and provided the name is not false or misleading. In ethics opinion 2005 Formal Ethics Opinion 8, the Bar concluded that the law firm's URL—the website's unique internet address—could qualify as a trade name. If the URL is more than a minor variation on the official firm name, it has to be registered with the State Bar. SmithJonesLaw.com, a variation of the firm's actual name, would not have to be registered, while a name such as NC-Worker-Injury-Center.com would. Instructions for registering the trade name can be found on the Bar's website at www.ncbar.gov/resources/forms.asp. ■

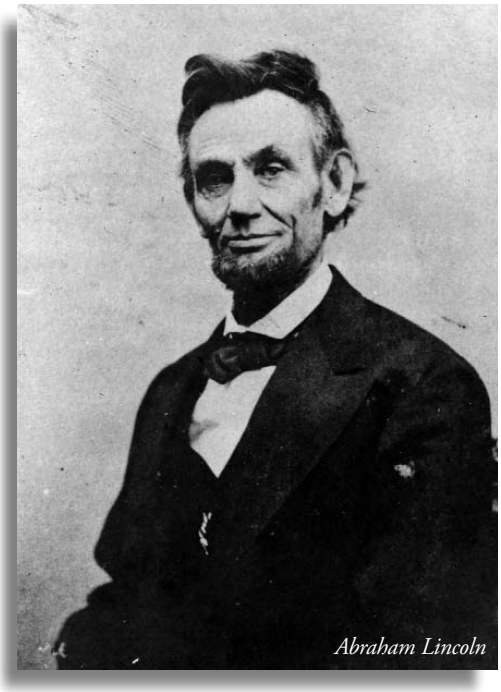
Michael Dayton is the content manager for Consultwebs.com, a Raleigh-based web design and consulting company for law firms. He is the former editor of North Carolina Lawyers Weekly *and* South Carolina Lawyers Weekly *and co-author of a book on the history of Wake County lawyers, published in 2004.*

Attorneys who have questions about their website content can contact the State Bar at 919-828-4620.

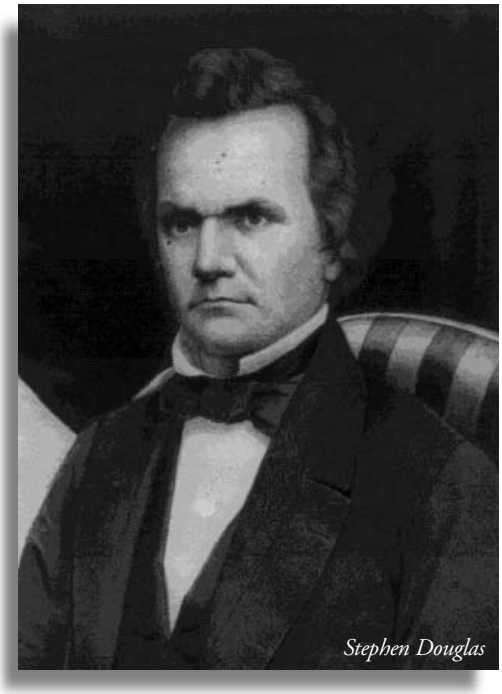
The Lincoln-Douglas Debates

By R. D. Douglas Jr.

The Civil War in the 1860s had been in the making for 40 years before shots were fired. The Lincoln-Douglas Debates of 1858 reviewed all these years and focused on the tensions and differences that clouded the minds of our citizens, and finally tore our nation apart.



Abraham Lincoln



Stephen Douglas

Two things might be considered before looking at the debates; first, the background of the two speakers, and second, the rules and conduct of the debates.

Lincoln, originally from Kentucky before practicing law in Illinois, had educated himself by reading everything he could find. He served two years in the United State House of Representatives, and then returned to his middle Illinois law office. He was not well-known throughout the state. However, when he was nominated to run against Douglas for the United States Senate, Douglas wrote to a friend, "Mr. Lincoln is the strongest man of his party—full of wit, facts, and dates, and the best stump speaker with his droll ways and dry jokes in the West. He is as honest as he is shrewd, and if I beat him, my victory will be very hardly won."

We all have mental pictures of tall, thin, bearded Abraham Lincoln. Stephen A. Douglas, born in Vermont, raised in upstate New York before going to Illinois at the age of 19, was 5'5", large head, stocky, but so full of energy that a newspaper called him "The Little Giant," a name by which he became nationally known.

When Daniel Webster, Henry Clay, and John C. Calhoun had left the Senate floor, Douglas was considered the leading speaker in the United States Senate. He had been a senator for 12 years before the debates and was one of the nation's leading Democrats. He was chairman of the Committee on Territories, which oversaw a variety to topics related to the territories, including their admission as new states.

I will try to compare the 1858 Debates with what we have come to know as debates in our own time. I have watched numerous confrontations called debates over the last 60 years. Each has had the same format. The candidates appear on opposites sides of the room facing the television camera. A panel of several journalists or a single political pundit asks a series of questions considered to be important to the television audience. The candidate has two and one-half minutes or three minutes to answer; then the question goes to other candidate. Neither candidate has time to give his reasons for his position on the issues; he has no chance to question his opponent's reasoning. In some of these

political arenas, each speaker may be given two minutes to rebut the other's answer, usually an expected contradiction, but little more. At the end, you know the stand of each on issues already promoted by the media. On some occasions, I have wondered at the logic of the candidate, how he came to his stated conclusions, but I have learned nothing of his character, his ability to compromise, or where he might stand on future issues which may arise to affect me.

When Kennedy debated Nixon in 1960, a panelist asked questions for a two and one-half minute answer. The Carter-Ford Debate allowed three-minute responses. When Regan debated Carter and then Mondale, Regan was given two minutes to answer.

The 1858 Debates were wonderfully different. The first speaker (rotated on each of the seven confrontations) spoke for one hour. He chose his own topics, gave his position on each, and his concern that the other side might prevail. The other candidate then had one and one-half hours to propose his own beliefs, answer his opponent, and paint pictures of his hopeful success and the terrible consequences of his opponent's election. The first speaker then had thirty minutes of rebuttal or to introduce still other ideas.

No one told either speaker what to cover in his allotted time. Unlike our modern debates, where nearly every viewer has watched the previous debate, few in the 1858 audiences had been present in the earlier confrontations. Thus a speaker, remembering the crowd's reaction to a particular exposition, decided what to repeat or whether to be silent on such subjects.

The audience listening to the debates was usually about 10,000 settlers, farmers, and tradesmen, often bringing their families and doubling the size of the towns where the debates were taking place. They looked forward to three hours of high entertainment. The physical strain on the speakers was enormous. With no electric devices, the debaters spoke from a raised platform or a balcony to crowds from 10,000 to 20,000 people standing or sitting in an open field. A light rain fell on one of the seven encounters; slight but steady winds at two other towns, making speaking more onerous. Douglas spoke in what the newspapers called a deep, sonorous voice. Lincoln had a high voice, but it carried well.

If one speaker believed his opponent had a position on some subject unpopular in that area, he would repeat at future debates to force his opponent to repeat the stand on the question. Both knew when to rephrase the other's questions or statements or when to ignore them.

Now we will consider the historical background of the debates. Back in 1820, as new territories were seeking statehood, there was open talk of dissolution of the Union. Southern states, roughly equal in number to anti-slave states, feared an unbalanced nation. Webster, Clay, and Calhoun helped work out the Missouri Compromise of 1820. Missouri came in as a slave state, but the northern line of Missouri was projected westward. New territories or states south of the projected line would allow slavery, north of the line, slavery would be forbidden. This appeased the South, satisfied the North, and the tensions subsided. All of Kansas, part of Colorado, all of the Mexican lands, and an area of Spanish California were south of the line.

In 1848, the Mexican War was coming to a close and new lands, taken from Mexico, brought a renewal of concern. Congressman David Wilmot proposed introducing a proviso that slavery would not be allowed in any lands taken from Mexico. This Wilmot Proviso never actually passed in Congress, but for years both the North and the South saw it as a possibility. Then California, ceded by Spain, enacted a slave-free constitution and asked for statehood, including its lands south of the Missouri Compromise line.

In 1850, furious talk arose concerning the dissolution of the Union, and a new compromise made its way through Congress, taking in California as a free state, prohibiting slave trading in the District of Columbia, and not actually prohibiting slavery in some of the territories.

In 1854, the huge land of Nebraska was about to be organized as a territory. Senator Douglas helped write and pass the Kansas-Nebraska Act. The new territory would be divided into Kansas and Nebraska, each to enact its own territorial constitution and then later to vote on a state constitution. To Douglas, this was a vindication of his great devotion to popular sovereignty. Kansas, south of the Missouri Compromise line, and all of Nebraska, north of the line, were allowed to vote on the slavery issue. The Kansas-Nebraska Act actually violated the Missouri Compromise, which had predesignated the slavery status of each of these territories. Consequently, the Kansas-Nebraska Act repealed the Missouri Compromise.

Before the debates started, the two candidates for the Senate from Illinois had well-defined their basic political positions.

Lincoln had stated that he would not attempt to disturb slavery in the states where it was already allowed. The Constitution was silent on slavery. The Bill of Rights amending the Constitution to ease the fears of the Founding Fathers stated in Amendment 10 that all powers not specifically given to the federal government would remain in the states. Lincoln insisted that slavery must be prohibited in any of the new territories, both when recognized as a territory and before becoming a state.

Douglas set his heart on popular sovereignty; that each new territory had the right to vote on its status, with its own constitution, which would allow slavery or prohibit it. Then when the territory asked for statehood in the Union, it could vote on its own state constitution. Douglas said that popular sovereignty was the very essence of democracy, allowing the people to make their decisions.

Lincoln constantly expressed the belief that slavery was morally wrong. He said on several occasions that he would not disturb slavery in the slave states which presently allowed it—it would eventually die of itself in due time—but there must be no extension of this great wrong.

Douglas, who frequently expressed his opinion that slavery was an abomination to both races, felt that in a great democracy this issue must be decided by the people themselves in secret ballot. He said, "Southern men have consciences, are civilized, they know the difference between right and wrong as well as we do, and they will have to account to God and posterity, not to us in 1858."

There is one logical conclusion which neither speaker seems to have explained. Why was a vote by a territory so important? If a new territory were to allow slaves, integrate slavery into its customs, its work procedures, and its moral thinking; then when ready for statehood, it would in all likelihood become a slave state. Conversely, if there were no slaves for three or four years in a territory, it would be very unlikely that the new state would decide it must now have slaves. Neither Lincoln nor Douglas presented this argument. As observed elsewhere in this paper, Douglas claimed that in the absence of governmental power in the Constitution, each state could vote on this issue. Therefore in such absence of Constitution power over territories, each territory could vote on the issue. This was democracy.

Lincoln, never actually demanding government control over slavery, insisted that as to territories, the Constitution did not refer to slavery, and that meant that the federal government had absolute right over the territories.

One other bit of history made Douglas' task harder, and Lincoln seized on it and even Democrat President James Buchanan declared war on Douglas.

Kansas as a territory had proposed a constitutional convention at its provisional capital, Lecompton; but instead of voting on a full plan of operations with the constitution, Kansas leaders limited the vote almost to slavery question alone. Also, hoards of men from Missouri, Kentucky, and the southern states swarmed into Lecompton overnight, and Kansas voted to allow slavery.

A victory for slavery? A triumph for popular sovereignty? Douglas promptly denounced the vote as a fraud, saying that the people of Kansas had not voted on a constitution and must have another chance to express their views. His position alienated many southern supporters, and President Buchanan sent a postal service official to 50 Illinois towns to discharge any post master or employee who had openly supported Douglas.

Before the debates, in their senatorial campaign, Douglas had arranged speeches at Chicago and Springfield. His popularity brought great crowds to hear him. Lincoln sat in the back of the crowds both times, waited for Douglas to finish, and then, as the crowd started to leave, Lincoln announced from the platform that in an hour, "so you can eat dinner," he would answer Judge Douglas' speech. The crowd roared, "We'll be here."

Douglas publicly denounced this tactic. Then Lincoln proposed that the candidates meet jointly, one against the other, several times in the future. Douglas' advisers urged him to refuse. Why should he provide the big crowds of voters to hear Lincoln? However, it appeared that it would be politically advisable to go ahead and agree to the debates. Douglas proposed meetings at seven small towns scattered over the state; Ottawa, Freeport, Jonesboro, Charleston, Galesburg, Quincy, and Alton. Lincoln accepted, and the time limits were fixed.

Because the candidates, if only in a single state election, were excellent speakers on subjects of great national importance, the eastern press, as well as the Illinois newspapers, was there to take down the exact words of the speakers. Telegraph lines worked all night and nearly all of America read the next morning what the candidates had said and read greatly contradictory reports on who won the last debate.

For example, as to one debate, Republican newspapers said, "Honest Abe chewed up the Little Giant and spit him out to the delight of the crowd." Of the same debate, Democratic newspapers said, "Douglas knocked out Lincoln's spindly shanks from under him and as he struggled for composure, the crowd roared at the spectacle."

At another debate, a Republican newspaper said that after the debate, a torchlight procession with 800 oil torches escorted Lincoln from the debating area to his hotel; while Douglas' procession had eight torch lights and

three of them ran out of oil.

What did Lincoln and Douglas of Illinois discuss that so captured the attention of the nation? They talked of a national bank. They argued over the location of a new railroad to the Pacific to go in the North or through the South. They delved into individual rights of states under the Constitution. The primary topic, however, which governed the thinking of the other issues was the question of slavery. In several debates, Lincoln often quoted the Declaration of Independence, which said that all men were created equal. Lincoln reminded the crowds that the Declaration said "all men," not just white men. Douglas answered, "Are you willing to say that every man of our Founding Fathers who signed that great document declared that every Negro was his equal, but was hypocritical enough to go back to his home and hold his slaves?"

At the Illinois Republic Convention in Springfield on June 16, 1858, Lincoln had been nominated for the Senate race. At that time, he made his famous "House Divided" speech. In his acceptance speech for the Senate race, Lincoln quoted from Scripture, "A house divided against itself cannot stand. I believe this government cannot endure permanently half slave and half free. I do not expect the Union to dissolve. I do not expect the house to fall, but I do expect that it will cease to be divided. It will be come all one thing or the other." This Lincoln speech before the debates gave Douglas grounds for substantial attacks.

At Ottawa, Douglas used Lincoln's "House Divided" speech to bring scorn on his adversary. Douglas told the crowd, "Lincoln says the Union cannot exist divided into free and slave states. If it cannot endure thus divided, then he must strive to make them all free or all slave, or be for dissolution of the Union. Does he not know we are divided in many ways in culture, speech, and business? If we must all think, speak, and conduct our lives exactly as our neighbors, the Union must perish."

At Charleston, Douglas said, "When this government was established by Washington, Jefferson, Madison, Franklin, and the other patriots of the day, it was composed of free states and slave states, bound together by our common Constitution." In the actual debates which totaled 21 hours of speaking, certain statements stand out as to what the speaker wanted to emphasize, even repeating at different towns. If one statement by Lincoln evoked loud applause and shouts of "That's our rail splitter!" and "Hurray for Honest Abe!" the speaker was astute enough to use it for another audience. Douglas used the same strategy with good results.

There seemed to be three basic rules:

1. To explain your stand on subjects of interest;

2. To persuade your listeners to adopt your position;

3. To ridicule your opponent's stand as being illogical, unattainable, and completely unacceptable to the listeners.

Lincoln commented that the Declaration of Independence and the Constitution said all men are created equal, not necessarily equal in their ability or born in equal circumstance, but equal in freedom to work and eat the bread they earned by their labor.

It was at Charleston that Lincoln made the comments that came back to haunt him in future years. Apparently Mr. Lincoln observed that even in free Illinois where the speeches were being made, the people were not yet ready for full equality of races. He said, "I want to make it plain that I am not in favor of making voters or jurors of Negros, nor qualifying them to hold office, nor to intermarry with white people. (If this reference to Negros not voting seems unreal by today's standards, we might remember that until 1920, women could not vote in the United States. It took an Amendment to the Constitution to give them that right.)

In the debates, Lincoln kept emphasizing the moral wrong of slavery. As in Alton, he said, "While we have no power through the federal government to erase slavery where it now exists, we must keep this great wrong from spreading. When Judge Douglas is inviting states to establish slavery, he is blowing out the moral lights around us." Lincoln said at the next debate that he had a line he would not cross. He said, "I say upon this occasion I do not perceive that because the white man is to have the superior position in our land, the Negro should be denied everything."

In all of the debates, the crowds loved to shout when a statement pleased them and to boo and hiss when a speaker brought up some statement of the opposition, which he knew the crowd would dislike. Both Lincoln and Douglas on several occasions said that they needed all of their allotted time to cover the subjects and they asked the crowd not to express its dislike or approval until the end of the speech. The crowds paid no attention to this.

At a subsequent debate, the "House Divided" speech came up again and Douglas said, "Why cannot we act as our fathers did? In Washington's army, there was no sectional strife. These brave soldiers fought under a common policy; they sought a common destiny, and no one was ready to forego a common aim because he did not agree with his fellows on every idea."

With regard to the question of what the Constitution covered on slavery, it is interesting to note that after the Civil War had started and Lincoln set out his Emancipation Proclamation, he believed he had no right to free the slaves except as a special power during a war. His proclamation freed only slaves in the Confederate States, those taking up arms against the United States. Some citizens of Pennsylvania, Maryland, Delaware, and New Jersey owned slaves, but they were not freed by Lincoln's proclamation.

A story on the 1858 Debates should not end with the last meeting in Alton. Natural questions would be: Who won the debates and what happened to Lincoln and Douglas afterward?

You might say that Douglas won the debates, because after the campaign, the Illinois Legislature voted 54 to 46 in favor of Douglas, and he returned to his senatorial seat.

In 1860, Lincoln—a national figure from the debates—was nominated for president by the Republican Party. Douglas was nominated by the Democrats, but only by a splintered party. At the Democratic Convention in Charleston, South Carolina, disagreements between northern and southern Democrats became so heated that several states withdrew their delegations and their people walked out of the convention. It was adjourned to pick up in Baltimore. Douglas became the favorite nominee, but John Bell was nominated by a "constitutional" group and John C. Breckinridge was nominated by the secession advocates. As a result, when the national election took place in November 1860, the Democratic vote was split three ways and the Republican Lincoln was elected.

After the election and the firing on Fort Sumpter by Confederate forces, Douglas asked President Lincoln what he could do to help preserve the Union. Lincoln stated that a number of border

CONTINUED ON PAGE 30

"Perhaps We Have Not Done So Badly After All."

Reflecting on Lincoln's Legacy for the Profession of Law

By Justice Patricia Timmons-Goodson

"In 1876, the celebrated orator, Frederick Douglas, dedicated a monument in Washington, DC, erected by black Americans to honor Abraham Lincoln. The former slave told his audience that 'there is little necessity on this occasion to speak at length and critically of this great and good man, and of his high mission in the world. That ground has been fully occupied. . . . The whole field of fact and fancy has been gleaned and garnered. Any man can say things that are true of Abraham Lincoln, but no man can say anything that is new of Abraham Lincoln.'"[1]

Kazu Nitta/Images.com

Some 133 years later, celebrating Lincoln's bicentennial birthday, I acquired a renewed appreciation for the words of Frederick Douglas on that day in 1876. My task—originally in a speech to the Mecklenburg County Bar, and later in this piece for the *Journal*—was to deliver an appropriate Law Day message consistent with the 2009 theme, *A Legacy of Liberty—Celebrating Lincoln's Bicentennial.* Contemplating the issue, I struggled to develop a message, to offer some thoughts or insights on our 16th president that would offer a fresh perspective.

In the process, I read and learned much about Lincoln the historical figure. I reflected on Lincoln, the man. Indeed, I quickly came to believe that if one simply did some reading about Lincoln, reviewed his writings and his

speeches, or read of his discussions and debates, one would swiftly discern his occupation—lawyer. Lincoln was, in fact, a veteran trial lawyer who handled contested wills, railroad tax entanglements, and even murder cases. Indeed, his experiences were not limited to law. He remains the only president to hold a patent—a device designed to lift river boats over shoal.

Ronald C. White argues that this breadth of experience taught him to appreciate opposing points of view.[2] He assiduously cultivated the skill of marshaling facts and arguments to sway people over to his point of view. He is reported to have had great interpersonal skills. John Nicolay, one of Lincoln's secretaries, noted his boss' uncanny ability to evaluate the measure of people: "He knew men on the instant."[3]

With the benefit of my reading and newly acquired knowledge, I prayed for some inspiration. The inspiration came, improbably enough, in that most unsentimental of places, the grocery checkout line. Since I am still old-fashioned enough to prefer cash to debit or credit cards, I found myself staring at the image of our 16th President on a five-dollar note. His appearance on that currency puts him alongside some of the true giants in the American pantheon, folks like George Washington, Thomas Jefferson, Andrew Hamilton, and Benjamin Franklin.

I can hear many of my readers thinking, "So what? Of course, Abraham Lincoln is every bit as iconic, as much a piece of Americana, as baseball and apple pie." I mention this because today we take for granted that he was a "great" man. Not just the United States, but nations around the world from Paraguay to Liberia to Abu Dhabi have put his face on their currency. At his death, Secretary of War Edwin M. Stanton stood by the great man and is supposed to have declared, "Now he belongs to the ages."[4]

Easily forgotten is the historical reality that Lincoln, the man, did not always inspire the confidence, or the intensity, that Lincoln, the idol, does today. Indeed, some of the highest praise that could be mustered for him at the time of his nomination was the consensus that, "Perhaps we have not done so badly after all."[5]

That fascinating story is a chasm away from our world of 24-hour news channels and blogs. Apparently, after he secured the 1860 Republican nomination for president, in Chicago, a group of party leaders rode the train to Springfield, Illinois, to give Abraham Lincoln the formal notification. Most of these party leaders had never met, or indeed seen Abraham Lincoln. In fact, most had supported one of the other candidates. Many were disappointed by the eventual choice of Lincoln as the Republican nominee. There was considerable skepticism about the man and his abilities. About his physical appearance, it was said, "His pantaloons were very short, causing him to look very awkward."[6]

His contemporaries described him as "more or less careless of his personal attire."[7] And those were the views of his friends! Unflattering remarks were made about his Hoosier accent, and his vocabulary was declared "unrefined." Future Secretary of War, Edwin Stanton, the same man who was to declare that Lincoln "belonged to the ages," sang a very different tune early in Lincoln's candidacy. At their first meeting, Stanton savaged the man who had brought Lincoln, declaring, "Why did you bring that long-armed ape here; he does not know anything and can do you no good."[8]

It was against this background, in a small parlor in Springfield, that these dignitaries—mostly from the great eastern cities—presented

this practically unknown mid-westerner, Abraham Lincoln, with the letter formally notifying him of his nomination. "The Chairman, George Ashmun of Massachusetts, made a brief, formal speech. The lanky stranger then lifted his head and made a short, dignified reply, thanking them, hinting at an awareness of the size of his responsibility, promising to write a formal acceptance, and expressing a wish to shake each of them by the hand. After they left the house, the surprised governor of an eastern state remarked: 'Why sir, they told me he was a rough diamond; nothing could have been in better taste than that speech.' And the dignitaries, conferring, said to each other: 'Perhaps we have not done so badly after all.'"[9]

This story gives us an excellent template for measuring our own professional lives as we celebrate Law Day 2009. So many of us are called to the bar for so many reasons, and yet all of us tend to be high achievers. Having worked hard through preparatory or high school, college, law school, and, finally, in actual practice, we not only concede to our type-A personalities, we positively revel in them. We take pride in them. They become part of our identity and self-image.

Why is our drive for success an issue? I believe it is an issue because this process inevitably sets up higher and higher hurdles for us until even the best must falter. So many of us demand that we be kings of all creation, the best of the best, the crème de la crème, that we inevitably set ourselves up to fail.

Perhaps this explains the results of a 2000 American Bar Association survey which found that only 27% of the lawyers polled were *very satisfied* with their professional life. The remaining 73% described themselves as *somewhat satisfied*, at best, or very dissatisfied, at worst.[10] Lawyers have the highest rate of depression across a survey of 105 occupations in the United States.[11] According to an American Bar Association poll, 84% of lawyers said their expectations about helping to improve society were not met.[12]

After all, the best of us cannot win every case, persuade every client, recover every cent, and rectify every wrong. However; as long as we have accomplished something toward our objective, as long as we walk away with at least half a loaf for a client who previously had none, as long as we conducted a trial free of prejudicial error, we can turn and say, "Perhaps we have not done so badly after all."

Yes, a few of us are destined to achieve the highest aspirations that drove many of us to law school: freeing an innocent man from death row; winning a mass tort case like Julia Roberts in *Erin Brockovich*; dismantling a major crime organization; presiding over the trial of the century; writing the seminal case in an important area of the law. The recognition of the reality of our everyday professional existence should not deter the rest of us from what we will accomplish. These are the small, continuous victories we win every day, yet we don't even recognize them as such. Maybe we could not get an acquittal for the client, but we got the client a lesser sentence. Maybe we could not get the client custody of the children, but we got the client greater visitation rights. Maybe the debtor would not pay their full debt to our client, but the client got more as a result of our efforts than they would have otherwise. Perhaps we did not get that judicial appointment, but our practice contributes significantly to justice for all. By any of those measures, we should be able to say, "Perhaps we have not done so badly after all." In fact, it is important to acknowledge this, because the client likely will not. A client who is facing a prison sentence, loss of custody, or commercial disappointment is likely to be hurting, and we are going to be the face of that pain.

Even successful litigation or successful efforts may not gather much by way of gratitude. The Gospel according to Luke records that Jesus cured ten lepers, and only one them bothered to even thank him.[13] Why would we expect a better outcome than Jesus? However, it is entirely appropriate for us to acknowledge that, "Perhaps we have not done so badly after all."

Perhaps it is not to our lot to argue cases settling presidential elections before the Supreme Court. Yet the outcome of our clients' own cases will weigh in their minds far more strongly than a dozen Supreme Court cases. It is important for us to be cognizant of that fact, to be thankful for our small victories, and to remind ourselves again that, "Perhaps we have not done so badly after all." This is even more important because, as we are reminded daily, we wear two hats: we serve our clients, and we serve as officers of the court.

I have discussed what our work means to our clients. Now, let me briefly discuss that second hat. As Abraham Lincoln realized that the future of mankind and our country would be affected by his policies and decisions, so must we, members of the bar, understand that the future of our profession will be affected by our actions and our ethics. The very existence of our profession is a tremendous tribute to the nation and world we have built. The existence of the court system is an acknowledgment that we live in a time and place where we have agreed to settle our differences with rules and laws rather than bombs and bullets.

The importance of this cannot be overstated. At the height of the blitz over Britain in 1940, Winston Churchill is supposed to have asked his staff at the start of his daily briefing: "Are the courts functioning?"[14] The famously unsentimental Churchill's focus on the courts with his capital in flames all around him is a testament to the functional importance of law in a modern society. And a reason for its practitioners to say, "Perhaps we have not done so badly after all."

In closing, as we celebrate Law Day 2009, let us celebrate the strength and vibrancy of our laws and the rule of law. We must always understand that the rule of law is only as secure, and as strong, as the persons that support it. Lawyers make up the most vocal and critical group of supporters. We, as lawyers, must stay strong and be vigilant in that support of the rule of law. And in doing so, we remind ourselves "Perhaps we have not done so badly after all." ■

Justice Patricia Timmons-Goodson is a member of the North Carolina Supreme Court and is in her 24th year of service in the judiciary. She serves as co-chair of the editorial board of the ABA's Judges' Journal *and is a member of the* Perspectives Magazine *editorial board.*

Endnotes

1 Doris Kearns Goodwin, *Team of Rivals*, intro. at xv.

2 Ronald C. White Jr., *A. Lincoln* (Random House 2009).

3 William Lee Miller, *Lincoln's Virtues: An Ethical Biography,* 10 (2002).

4 William L. Stidger, *The Lincoln Book of Poems*, 31 (1911).

5 Miller, *supra* note 3, at 10.

6 *Id.*

7 *Id.*

8 David Herbert Donald, *Lincoln*, 186 (1995).

9 Miller, *supra* note 3, at 10.

10 American Bar Ass'n, *The Pulse of the Profession* (Nov. 22, 2000).

11 Patrick J. Schiltz, *On Being a Happy, Healthy, and Ethical Member of an Unhappy, Unhealthy, and Unethical Profession*, 52 VAND. L. REV. 871, 874 (1999).

12 American Bar Ass'n, *supra* note 10, at 28.

13 Luke 17:11-19.

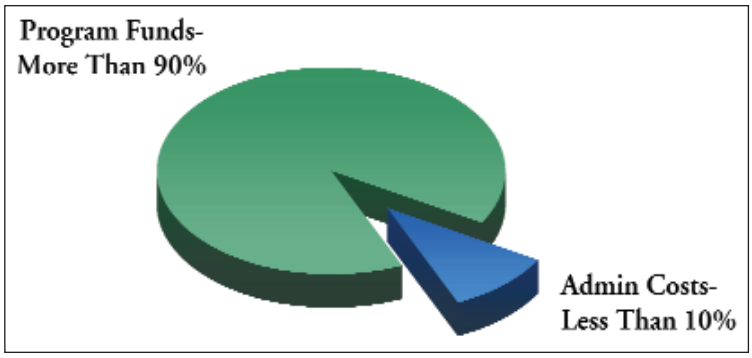
14 M. P. Bhandara, *The Three-Year Itch*, Dawn (Pak) at 22 (Sept. 15, 2002).

IOLTA Grants Support Equal Access to Justice

By Clifton Barnes

In celebration of the 25th anniversary of NC IOLTA, the NC State Bar Journal *is publishing a three-part series on NC IOLTA during 2009. This final article highlights some of the program's grantmaking.*

It reads like a movie script or maybe a modern-day *Lassie* TV show. Teenage boys, whose father is in jail and whose mother is homeless, reunite from different foster homes. The older teen gets an apartment in public housing, finds a job, and wins custody of the younger teen, who is still in high school.



Though IOLTA administration costs are also paid from program income, almost all the interest coming from the IOLTA accounts goes to making grants. IOLTA expenses have consistently been under ten percent of income since its inception.

Because they can't pay a pet deposit, they have to part with their beloved Jack Russell terrier. But the dog keeps finding its way back to the teens' apartment and the housing authority, saying the two disregarded public housing rules, sues for eviction.

Ultimately, a pro bono legal services attorney is able to negotiate a settlement so the brothers can stay in their home.

From unusual cases such as that one to the all-too-usual cases which involve protecting young mothers from abusive spouses and saving older couples' homes, grants from the North Carolina Interest on Lawyers Trust Accounts have been there to help.

Since its first grants were awarded in 1984, the NC IOLTA program has provided more than $50 million for legal assistance for at-risk children, the elderly, the disabled, and the poor in need of basic necessities. In addition, the program has helped lawyers connect with those who need their pro bono assistance.

"IOLTA funding is extremely important to Pisgah Legal Services," said Jim Barrett, PLS Executive Director. "PLS receives IOLTA funding to serve six counties in western North Carolina. Stable IOLTA funding has helped PLS grow to the point that it has 37 staff members, including 17 attorneys."

In 2008, through Pisgah Legal Services alone, those attorneys helped more than 700 victims of domestic violence obtain or enforce court protective orders and helped prevent homelessness for 593 households under threat of foreclosure or eviction.

"The flexible IOLTA funds play a crucial role in PLS' budget," Barrett said.

IOLTA funding is the only source of money specifically to pay for PLS' administration of the successful Mountain Area Volunteer Lawyer Program, which last year provided pro bono legal services in 827 closed cases, valued conservatively at nearly half a million dollars.

"Unlike the support of private foundations, which is often project-oriented, IOLTA funds are generally used for operating support," said Evelyn Pursley, executive director of NC IOLTA.

In 2008, NC IOLTA administered just over $4 million in grants, compared to $200,000 25 years ago. (In addition, NC IOLTA now administers more than $6 million in state funds annually for legal aid that passes through the NC State Bar.)

"The largest annual grant goes out to Legal Aid of North Carolina, the statewide program that also receives federal and state funds to do this work," Pursley said.

"Over the past 17 years, it has been my honor and privilege to work with the highly dedicated and selfless attorneys, paralegals and staff at the various legal aid organizations throughout the state, including Legal Services of NC, Legal Aid of NC, Legal Services of Southern Piedmont, Pisgah Legal Services, and the Legal Aid Society of Northwest North Carolina. These dedicated individuals provide much needed legal assistance for the poorest of the poor. I am always amazed at the dedication of the legal aid attorneys…Sometimes I wonder why they do it, and then I see the people that they help and remember the overwhelming satisfaction I have received in helping those less fortunate resolve their legal problems.

Over the years, I have been involved in a wide variety of pro bono projects and have been very impressed with the outpouring of support for these various projects among lawyers both in our firm and throughout the state. It is a tribute to our profession that people are willing to give so much of their time —including large blocks of time away from their families— to help a low-income person from New Orleans to New York and back to North Carolina."

Reid Calwell "Cal" Adams, Vice-Chair, NC Equal Access to Justice Commission
2007 Recipient Thorp Pro Bono Award
Womble Carlyle Sandridge & Rice, PLLC

Legal Aid of North Carolina, which provides free legal representation in civil matters to eligible clients in all 100 counties through 24 offices and six statewide projects, receives 52% of its funding through the federal Legal Services Corp.

"Some of that federal money is restricted, so we have to use other funding," said George Hausen, executive director of Legal Aid of NC. "We would be severely and negatively impacted if we did not get those IOLTA funds."

IOLTA funds 11% of Legal Aid's budget. "Not only is that substantial, but the support that IOLTA generates for Legal Aid through the bar association and the bar in general is tremendous," he said. "IOLTA is the nexus for the whole statewide justice community."

Hausen said the influence of the NC IOLTA Board of Trustees is significant.

"When we write our IOLTA grant application each year, it's like a validation of our program," he said. "Does IOLTA agree with the allocation of our resources and approve of the quality of the services we deliver? It really is a check on the direction and quality of specific projects."

For instance, a call center with a toll-free number with attorneys providing advice, brief service, and referrals has largely been funded by IOLTA. "It's been a successful one-stop shop for clients to be able to talk to a lawyer immediately," Hausen said.

In addition, IOLTA funded the technology for a web-based case management system that "makes us a statewide law firm," he said.

"They have funded a great technology package that allowed us to expand our services," Hausen said. IOLTA grants fund video conferencing clinics where one person can do what it took 25 throughout the state to do previously. In addition, Legal Aid has been able to help clients with foreclosures, many in rural areas, as the result of IOLTA grants.

Since 1992, IOLTA has funded the Clifton W. Everett Sr. Fellowship, which provides attorneys to these underserved rural areas of the state. Everett played a large role in creating the NC IOLTA program when he served as president of the NC State Bar. He later served as an IOLTA trustee from 1983 to 1990. IOLTA now funds two fellows every year.

The fellowships support entry-level staff attorney positions at Legal Aid so that they can recruit interested recent law school graduates and give them an opportunity to learn about the legal services practice and develop practical lawyering skills under experienced mentors. In addition, the fellowships provide staff assistance to rural programs that have difficulty recruiting and retaining attorneys.

The first proactive grant-making done by IOLTA also came in 1992, when it offered grants to volunteer lawyer programs to ensure that VLPs were established statewide. IOLTA continues to provide about $500,000 each year for volunteer lawyer programs that put private practice attorneys together with clients who need pro bono services.

Besides providing civil legal services to indigents, which historically accounts for 87% of grants awarded, the NC IOLTA program is limited to making grants for the improvement of attorney grievance and disciplinary procedures, for student loans for legal education on the basis of need, and for programs designed to improve the administration of justice.

One administration of justice grant program is the IOLTA Public Service Internship Program, which has been in existence since 1988. Stipends are provided for North Carolina accredited law school students to work summers in public interest organizations approved by the NC IOLTA Board. (See the Spring and Summer 2009 issues of the *Journal* for descriptions of summer internships by law students.)

"I think the trustees particularly like these grants because they feel as if there is a double or triple benefit," Pursley said. "They benefit the law schools by giving their students good summer placements. They benefit the students by ensuring some payment for the summer internship. And, they benefit the public interest organization by providing summer interns who they could not afford to pay."

Carol Spruill, who started the Pro Bono Project at Duke University in 1991 and served

as Duke's Associate Dean for Public Interest and Pro Bono until her resignation in December 2008, is an unabashed fan of IOLTA. This intern program is one reason why.

She says the stipends enable students to experience legal work in the public interest and, as a result, they often have transformative experiences.

"Many students have completed these summers determined to continue with their desire to serve those clients who face many hard knocks in life," said Spruill, who was a legal aid attorney from 1975 to 1991. "Even if the law students do not continue public service as a full-time career, all of them come out of the experience with a heightened appreciation of the need for more public service attorneys, and all of them are prepared to make pro bono commitments a significant part of their legal careers."

Spruill said that students fear accepting lower-paying public interest jobs after law school due to tuition debts that can grow to $100,000 or more. IOLTA has helped address that problem as well.

NC LEAF (Legal Education Assistance Foundation) is the country's first nonprofit organization dedicated to providing loan repayment assistance to attorneys in exchange for public service work.

"Simply put, NC LEAF could not function without support from IOLTA," said Esther Hall, NC LEAF Executive Director.

Over the years, the NC LEAF has received $667,000 in grants from IOLTA which have been used for operational support. "That allows all of our state funding to be disbursed directly to public interest attorneys to assist with the law school debts," Hall said.

Well more than $3 million in educational loan repayment assistance has been provided to these public interest attorneys. "IOLTA has been a steadfast supporter of the work of NC LEAF and has been a vital part of our program, enabling us to aid 404 attorneys since our inception in 1989," Hall said.

These attorneys have served as assistant district attorneys, public defenders, legal aid, and legal services attorneys. "Their work ensures the equal access to justice our society prizes," Hall said.

Former NC State Bar President Steve Michael of Kitty Hawk agrees. "IOLTA grants certainly help us fulfill our responsibilities outlined in the Rules of Professional Conduct," said Michael, who successfully worked for mandatory IOLTA in North Carolina. "Providing access to justice is one of the big obligations we assume, and this is one method of fulfilling those obligations."

Michael said that the IOLTA Board has done a good job over the years in selecting programs that have the biggest impact in providing access to justice. He said it is appropriate that the bulk of the grant money goes to legal services for the poor.

"But there are also grants IOLTA has made to start up programs that further the administration of justice," he said. "Once the programs are up and running, the funds will come to keep them going."

For instance, Michael noted IOLTA grants were instrumental in getting the Equal Access to Justice programs going, and now those programs will receive funding from the State Bar.

"The NC Equal Access to Justice Commission and the Equal Justice Alliance would not exist without the leadership of and funding provided by IOLTA," said Jennifer Lechner, executive director of the Commission and Alliance.

Pursley, the NC IOLTA Executive Director, and Michelle Cofield, director of public service and pro bono activities for the North Carolina Bar Association, presented information about the national trend of state access to justice commissions to then-NC Supreme Court Chief Justice I. Beverly Lake, who, as a result, established the Equal Access to Justice Commission.

IOLTA funded staffing and activities of the commission. Cofield served as the first executive director until 2008, when Lechner was hired as a full-time staff person for the commission and the alliance. That position was only made possible through IOLTA funding.

"Our (IOLTA) program has been and is still an active participant in determining how the problem of providing access to justice in our state should be addressed," said Tom Lunsford, executive director of the NC State Bar. "The IOLTA Board and staff are appropriately and usefully involved in shaping policy and in rationalizing the delivery of legal services. Our philanthropy is active and responsible, not passive and disengaged."

For instance, Pursley, recognizing a need for more collaboration, and was instrumental in creating the Equal Justice Alliance as a forum for civil legal aid providers who receive IOLTA funding to discuss coordination of legal services and efforts to increase resources. That group now meets regularly.

One member of that group who is thankful for IOLTA is Vicki Smith, executive director of Disability Rights North Carolina. In 2007, Carolina Legal Assistance became the federally mandated "Protection and Advocacy Agency" for North Carolina and changed its name to Disability Rights North Carolina. But, had it not been for IOLTA, the program would have died years ago.

"Beginning in 1998, our program was without any stable source of funding and, as a result, the program lost most of its staff," Smith said. "IOLTA funding, however, made it possible for our program to continue. IOLTA funding allowed us to pursue new grant proposals to secure a substitute funding source, continue our legal work, sustain an operating budget, and allow the board to devote the time and energy necessary for designation as the new Protection and Advocacy agency for North Carolina."

The purpose of a Protection and Advocacy agency is to protect and be an advocate for the human and legal rights of those with mental illness or developmental and other disabilities.

As Jim Barrett of Pisgah Legal Services said, "People would be amazed if they knew how much good IOLTA funds do."

Still, Hausen says that Legal Aid, for various reasons, is only able to provide service to about 30% of the people who contact them. More than two million North Carolinians currently qualify for legal services help—that's 28% of the state's population.

The programs have to set priorities so they can take the cases that will make the most difference in people's lives. Though funding sources sometimes affect priorities, the legal aid programs generally focus on helping clients with the basic necessities of life—food, shelter, safety, health, employment, and education. Says Pursley, "I think this economic downturn in particular has made us all more aware of how important these basic needs are to all of us and how vulnerable we can be to their loss."

Hausen said he'd love to see expanded IOLTA funding through "comparability,"

which is in at least 25 other states and requires that lawyers hold their IOLTA accounts only at banks that agree to pay those accounts the highest rate available to that bank's other similar accounts.

Some states that have gone to "comparability" requirements have seen income double or triple within the first year or two.

NC State Bar President John McMillan has made exploring a comparability requirement for NC IOLTA a goal of his presidency.

Spruill said that she hopes leaders will adopt comparability so that more low-income North Carolinians will have their day in court with an attorney by their side.

"Perhaps we will see fewer batterers get away with abuse of their spouses, fewer families thrown out on the street without a fair hearing, and more people getting all the benefits and medical care that our laws say should be provided to them," she said.

Bill Womble Sr., an original member of the IOLTA Board of Trustees, has been an active and well-respected member of the bar in North Carolina since 1939.

"I don't know that we will ever have adequate financing to provide the kind of legal services we'd like to provide to the poor of our state," Womble said. "But the goal of equal justice for all is a good and noble one, for which we should constantly strive. IOLTA has an important role to play in that effort."

Woody Teague, a founding IOLTA Board member echoes Bill Womble. "Back in 1978-79, Cliff Everett, Robinson Everett, and I had a hard time explaining the concept of IOLTA to the satisfaction of the late Chief Justice Joe Branch. But now Joe, Cliff, and Robbie would agree with me that this program, established by the North Carolina State Bar, has negated the usual lawyer jokes. Over $50 million for equal justice is something all of us lawyers should be extremely proud of. So, I say, 'Long live IOLTA.'" ■

Barnes, who majored in journalism and political science at UNC-Chapel Hill, served as director of communications of the NC Bar Association from 1987-2002. He now runs his own writing, editing, and web development business named cb3media.com.

Three Public Interest Lawyers Pay Off Law School Debt in 2008 with Assistance from NC LEAF

NC IOLTA supports NC LEAF, the first loan repayment assistance program for public interest lawyers in the country. By using NC IOLTA funds to support operations, NC LEAF is able to use all state funds received to help young lawyers in legal aid, public defender, and district attorney offices with loan repayment assistance.

Ann Bamburger

I attended law school at American University with the idea that I would become an advocate for those who don't have a voice in our society. I have always had an interest in women and children's issues. I knew that my goal after graduation was to work in a legal services office.

When I first began working at Pisgah Legal Services, I almost turned down the job of representing clients fleeing domestic violence because I was concerned about whether I could afford to work as a legal services attorney. When I learned about NC LEAF, I decided to take the job. I was thrilled to be part of Pisgah's Mountain Violence Prevention Project. I had the opportunity to represent clients fleeing domestic violence and assist them in obtaining the legal remedies necessary to break away from the situation.

Denise Lockett

NC LEAF's assistance has meant the world to my family. Without it, my debt from graduate and law school would have made it much, much harder to move to and stay with my dream job at Legal Aid of North Carolina.

I went to law school with the goal of working in the nonprofit sector. It actually took a while to get there—primarily because I was initially so concerned about paying back my loans. I was able to move from a private firm position to Legal Aid with far greater confidence because of NC LEAF's assistance. I took a substantial pay cut to move to this position. Without NC LEAF's assistance, I'm not sure I could have made the move nor stayed here. We are now debt-free from my law school loan, and that's terrific. I'm doing the work that I love and that our community needs, thanks to NC LEAF!

Pamela Thombs

With a 12-year history of working in the nonprofit sector, I knew when I graduated from law school that I wanted to serve in public interest law. I had been working in public interest law for at least three years when I obtained information on the NC LEAF program. At that time, my family had two small children in day care, a house with a mortgage that we were not able to sell in a city where we had lived previously, and a lease payment at our current home. All of this was in addition to our other regular living expenses and my student loan payment. I needed NC LEAF if I was to continue down this public interest road.

After NC LEAF approved me for the program and I had made payments for about a year, NC LEAF staff member Arlene Summers helped me restructure my law school debt to get the maximum benefit from the program. I began to pay a little more, and NC LEAF assisted me with a larger amount. About three months before I was finished with my payments, Legal Aid of North Carolina, my employer, began assisting employees through the NC LEAF program. These factors combined allowed me to pay my off my debt much earlier. I am extremely grateful to NC LEAF for allowing those of us who are committed to giving back to the community to do so without becoming indigent. ■

Taking the Pain Out of Foreign Language Documents

By Lillian Clementi

The attorney was frantic. With trial only days away, she had just remembered that she had to stipulate to the other side's translations of key French documents—and the material filled several boxes. "I [messed] up," she said ruefully. "I simply forgot about the French."

With non-English material increasingly prominent in US legal proceedings, this kind of scenario has become more and more common—and not because of incompetence or negligence. For many attorneys, working with documents they cannot read is a headache, and managing foreign-language documents can be a challenge even for a well-organized law firm. The good news is that if you follow four common-sense guidelines—1) planning ahead; 2) using a professional; 3) setting up a realistic budget; and 4) listening to your translator—you can handle non-English material more effectively, avoid disaster, and get the most for your translation dollar.

Plan Ahead

The temptation to set non-English material aside for later is perfectly natural, but—as in the real-life example above—yielding to it can be dangerous.

Solution: inventory foreign-language documents right away, especially if you don't know what you have. Even if you and your team are too busy to deal with them early in the case—and almost everyone is—the right linguist can help. With a few background documents and a quick briefing, an experienced translator can get to work right away, reviewing and analyzing your foreign material while you focus on other priorities.

Planning is equally important for the back end of your case. If you are a litigator, think ahead to depositions. What documents will need to be translated in advance? Will you need to have an interpreter present? Be sure that your team's pre-trial checklist gives you plenty of time to stipulate to the other side's translations, prepare your own certified translations, and—if any of your witnesses are uncomfortable testifying in English—book a competent interpreter well in advance. A small up-front investment in planning will save significant time, money, and stress later.

A Little Learning is a Dangerous Thing

It's natural to turn to a bilingual colleague when non-English material surfaces. But "knowing some Spanish" doesn't necessarily qualify a paralegal or even an attorney to translate or review foreign-language documents, says Thomas L. West III, owner of Intermark Language Services and former president of the American Translators Association (ATA). "A lawyer I know got a fax from his Latin American subsidiary and gave it to his Spanish-speaking secretary," he recalls. "Three words stood out: celebración, asamblea, and social. 'Relax, they're just having a party,' she said. It turned out to be an invitation to a shareholders meeting."

Go with a Pro

Bottom line: translation errors can be costly—even disastrous—so it pays to work with a professional. But how do you find the right language services provider? The ATA offers free, searchable online databases of its member translators and translation agencies at www.atanet.org. With the Advanced Search function, you can tailor your search to the language pair and subject area you need, and even specify geographical distances for in-person review.

Getting the right people is important: some "bilingual" reviewers are a waste of money at any price. Marjon van den Bosch, a professional linguist with extensive experience in document review, recalls several litigation matters involving thousands of pages of Dutch. "A staffing agency was tasked with finding competent Dutch-speaking reviewers," she recalls. "But in each case it filled out the team with amateur bilinguals recruited from social networking sites and temp attorneys who had taken German in high school. Google Translate was their tool du jour." Solution: if your linguists will come from a staffing or translation agency, ask for specifics on its recruiting standards and the credentials of the people who will handle your documents.

Bang for the Buck

Quality translation does not come cheap, but you can save time and money by thinking through your needs. To draft a reasonable budget, ask a few key questions up front.

Does all of your foreign language material really need to be translated? A few hours of review time from the right translator or a pass through the right computer translation software can help you identify the documents that matter most. Irrelevant documents can be weeded out, and less important material can be gisted or summarized in a few lines or paragraphs—saving time, translation costs, and document-handling headaches over the life of your case.

If you are managing a large litigation, it is critical to determine how much non-English material you have, and in how many languages. Using a unicode-compliant review platform to work with electronic documents such as e-mail messages and Microsoft® Word documents is one solid answer, says e-discovery expert Conrad Jacoby, founder of efficientEDD. "One of the biggest challenges for a litigation team is simply knowing what they have," he notes. "Fortunately, unicode—a computing industry standard that allows computers to encode and display most of the world's writing systems—has made it dramatically easier to find unexpected foreign-language documents and treat them appropriately during processing or review."

Size Matters

Once you know what you have, you can develop a cost-effective strategy for review based on volume. "If I have 200 documents in a given language, I'll likely have a linguist do a document-by-document review," says Jacoby. "If I have 5,000, I'll have the linguist work with review software and use his or her language and subject matter expertise to help winnow the material. A competent reviewer can tell very quickly if something is completely irrelevant or needs further attention."

Scalpel or Bludgeon?

How accurate do your translations need to be? Fast and relatively inexpensive, computer translation is often useful for brute-force gisting and first-pass review, but you will almost certainly need specialized human review and translation for your most important documents. "At best, computer translation will only be about 80% accurate," says Joe Kanka, vice-president of corporate development for eTera Consulting, a litigation support firm based in Washington, DC, "so we want a professional translator at the table from day one. That, to us, is absolutely critical."

And 80% accuracy looks a lot less impressive when you realize that you don't know which 20% of your translation is inaccurate. For sensitive documents, a qualified human linguist is usually the best solution. "Once the material has been winnowed down," says Jacoby, "a qualified translator or native speaker with the right subject knowledge will almost certainly do a better job analyzing non-English material than a monoglot reviewer working from computer translations."

Listening for Added Value

A good translator should also be able to connect the dots, seeing each new document as part of a larger whole. Your documents tell a story, and if you are willing to listen, experienced linguists can help you piece it together.

Too few legal teams take advantage of this added value. To tap into it, simply provide translators and foreign-language reviewers with the background documents your attorneys and reviewers are using, and keep related English-language documents with foreign material when sending it out for translation. If you are working with more than one linguist, make sure that everyone on the team is sharing background and terminology. Stay focused on the big picture, and insist that your translators do the same.

Strong Relationships

Strong relationships and institutional memory generally help a law firm serve its clients more effectively, and the same is true for translation providers. In the case of the last-minute stipulations, the frantic attorney called a translator who had worked on the litigation for several years. She quickly proposed a damage-control strategy, and translators, paralegals, and attorney were able to work together to complete the review in time for trial.

Surprises are inevitable in legal work, but thinking critically about your timeline and budget and working closely with qualified linguists can make your project run more smoothly. Veteran patent translator and ATA President-Elect Nicholas Hartmann has seen this first-hand. "Ideally, the law firm, its client, and the translator work together, forming an effective partnership that enables all of us to keep our customers, earn their respect, and enhance our professional reputations." ■

A working linguist with more than 15 years of translation experience, Lillian Clementi provides translation, editing, and document review for Lingua Legal. An associate member of the American Bar Association, Lillian is also an active member of the American Translators Association (ATA) and has served as president for its Washington, DC, chapter and is the coordinator of ATA's School Outreach Program.

President's Message (cont.)

did a terrific job in appointing committee chairs this year, although some of the credit goes to Hank who originally appointed a few that I just asked to hold over. I am grateful to all of the committee chairs for their dedicated work this past year. To the members of the council who devote the better part of four weeks each year to State Bar business at quarterly meetings in addition to reading and digesting vast quantities of materials and attending committee and sub-committee meetings between those quarterly meetings, I thank you for allowing me to serve with you and for all the support you have given me over these past three years. Every one of you has responded positively and effectively when asked to perform tasks.

Finally, to those six past-presidents who served as members of the nominating committee and over three years ago asked me to serve as vice-president, I am grateful to you for your confidence and for giving me the opportunity to follow in your steps. I am proud to be a fellow lawyer in the North Carolina State Bar with all of you. ■

McMillan earned both his BA and JD degrees from the University of North Carolina at Chapel Hill. He was admitted to the practice of law in 1967. That same year he joined the firm with which he still practices—Manning, Fulton & Skinner, PA.

Donnie's Hawk

By Thomas Keith

My given name is Keith Corbett Pridgen Marshall, but you can call me Casey. The name is a combination of all the family names, white and black, of all my ancestors who took up patents to claim the lands between the Black and Cape Fear Rivers in what is now Pender County. The lands are covered by gum, swamps, bays, pines, and Cypress trees covered in Spanish moss. The Yankees foisted townships on us after 1868 and made a township out of the lands and called it Canetuck, but some outsiders call it Oblivion. I was born 86 years ago on what was once called the Fowl Foot Plantation according to the 1790 Anders patent. The rice fields are all tupelo gum and Cypress now, but I know where a few of the original drainage ditches remain. I know my time on this earth is short. I have led a good life. The Lord has allowed me to be born, work, raise my family, and hopefully die on the same lands my grandfather's grandfather, William Sr., and his sons wrestled from the bears, alligators, yellow flies, chiggers and cottonmouths to save from the tories, carpetbaggers, and tax collectors.

The incident of which I am to speak happened almost 46 years ago. For many years after the event, I puzzled over what happened, hoping to find an irrefutable explanation. Only in my old age am I now able to put aside the conventions of my education to find a satisfying answer. It was the answer I suspected all along.

The mystery began after I renewed my association with Donnie Corbett, a distant cousin of sorts. After the ninth grade, Donnie had only gone as far away from Still Bluff as the navy would send him, to Norfolk. After the second war, he began to work as a boiler maker for Babcock and Wilcox in Wilmington. He was a natural born mechanical genius. What broken machine parts he could not repair, he could fabricate from scratch using only homemade tools at his work bench in his home. A good union contract and 36 years on the job allowed him to retire well before he was 60. He determinedly kept active and became the community fix-it man. He also made a few dollars farming by selling his bottom land hay twice a year, just as I did. Small of stature and unusually thin, his skin had a dark bronze sheen from being outside. While not impecunious, he always wore the oldest, most faded, barbed wire-ripped denim jacket and what looked like might have been a leather ball cap to cover his bald spot. Never without a Camel cigarette, he could talk rapid fire like a Pridgen, with the butt stuck to his dry bottom lip flapping up and down like it was glued on. Donnie was a most unprepossessing man, but was also one of the smartest. He also had saved about every dollar he had ever made and invested wisely in the stock market. I settled his estate. I was amazed by the size and scope of his holdings. Maybe I should have been a union man.

About the time I began a little farming, Donnie started to take more interest in those activities, since he had no use for lawyers. Donnie was about ten years older than me. With my limited knowledge of farming and my total lack of mechanical ability, Donnie knew that his lawyer neighbor would need a lot of help. I was always tearing up my equipment; he was always repairing it. He used to tell me, "I could give you a piece of stainless steel and you would give it back rusted."

Even though our home places sat on large tracts, our houses and out buildings were both fairly close to each other on the same hill overlooking the bottom lands. In fact, the original Marshall tract shared a long boundary line with the Corbett tract. Our common deed descriptions had been copied and recopied in deed after deed without anyone ever updating the 1790 legal description. Both our deeds began at the same point. The legal descriptions started, "Beginning at a Cypress tree on the Cape Fear River." It was a good thing we both agreed on the location of the line.

Our houses were close enough that, while you could not see each other's buildings, you could hear a tractor start up on the other side of the hollow that barely separated the two tracts. When I lost or broke something on my tractor, I would turn off my engine while I tried to find or repair the part. That was down time. That's when I could hear Donnie start up "Fat Alice," his tractor, which he would ride to my rescue. Donnie would know that when my tractor engine noise stopped for too long, I had broken or lost something. He would swoop down from his hill and alight next to me to tell me what to do, help me find the lost part, and get me on my way. But that meant more down time since he'd talk for a long time after he had completed his task. He was retired; I wasn't. In the beginning, I resented Donnie's intrusions on my misfortunes. Eventually, I actually learned to look forward to his appearance and could summon his help without asking for it. All I had to do was turn off my tractor engine.

He would never charge me for his time, even if he worked half a day fixing something it took me five seconds to break. There was

The Results Are In!

This year the Publications Committee of the State Bar sponsored its Sixth Annual Fiction Writing Competition. Eight submissions were received and judged by a panel of eight committee members. The submissions that earned first prize is published in this edition of the *Journal*.

one thing he would charge me for, and that was his cutting and baling my hay since I sold it for cash. He cut my crop on shares using some ancient hay-making machinery that he had gotten third-hand, from which he somehow managed to coax another decade of usefulness. While he would let me borrow any of his newer farm equipment of the unbreakable kind, I never thought of asking to borrow his haybine and baler. Only Donnie could make the decrepit New Holland baler scoop up the long lines of wind rowed, new mown grass and pass it through the cranking, clanking, whirling machinery to transform it into a perfectly formed, rectangular, sweet-smelling, 60-pound bale of hay.

Not only did Donnie bale my hay and keep my implements running, he was constantly policing my fields for lost parts while riding on his Fiat-Allis tractor. He would even go by my tractor barn and survey my machinery to see what I had broken or lost each weekend that I allegedly farmed. He would make sure the lawyer was maintaining his equipment correctly. One time he even told me that he had seen some fuel dripping from my tractor and, without asking me, machined a new fuel line and replaced the one that had offended him. I never objected.

I had inherited the color blind gene from the Marshall family. Like my father, I am almost totally red-green color blind. I can tell you that primary red looks different than primary green, but I could not find a red ball on green grass. My wife has always had to dress me in the mornings, especially if I had court. On the mornings I would have to get up before her, she would lay out my properly color-coordinated clothes the night before. On the few occasions that I woke earlier than usual and had to dress without her supervision, someone in the office would smile at my choice of tie or shirt and remark, "Well Casey, it looks like you let your wife sleep in today." How did they know?

For recognition purposes, most farm equipment makers paint all their products a distinctive color; hence, John Deere green and Massey Ferguson red. Of course, there is a Ford blue, but Ford only makes tractors and not equipment anymore. My tractor was orange, indicating a homemade paint job on a piece of machinery of indistinguishable age and questionable paternity. Whenever you lose a red, green, or orange part in the field, it usually falls on green grass. This makes it invisible to me. Not only could Donnie see orange parts in green grass, but he had eyes like a hawk and the patience to go with the search.

On the occasions when he found one of my lost parts, he would either reinstall the part on the appropriate piece of machinery, or, if I wasn't around, he would place it on the tractor or implement close to where it should be installed by me. On the latter occasions, he would never tell me he had found the lost part. He would just let me discover it on my own the next time I got around to using the piece of equipment. I would then thank him. It was a ritual that we followed for years, continuing even after his untimely death.

Other than Donnie, I ran the place pretty much by myself with the exception of some occasional help from some of my daughters' college-aged male friends who made the mistake of trying to impress me by offering to help. One boy, Will, was willing to work hard for me. The only other regular companion to our work was the red tail hawk who patrolled the bottom land hay fields. Whenever the hawk heard my tractor in the hay field, he would appear *deus ex machina*. He would climb down from the sky and descend to the top of the tallest and biggest walnut tree at the most opposite end of the field where I was working. With each ten foot cutting swath of the bush hog, dozens of field mice would be revealed to the hawk and would be added to his menu. However, under no circumstances would the hawk ever come closer than the opposite end of whatever field I was working with the tractor. After all, the hawk came to eat, not talk.

One week before a Christmas holiday, Will called to tell me he was home from graduate school in botany at State College and needed to make some farm money for family gifts. I had put off repairing the line fence between Donnie and my farm hoping for such an offer from Will. I enjoyed fencing even more while sharing the task with someone like Will. One of his undergraduate majors in college was philosophy. Unlike the usual type of farm help, Will was able to talk about more than NASCAR and could discuss even more complicated subjects such as women. Our work that week would have us replace the old barbed wire along my common boundary line with Donnie and chain saw the ever encroaching, aggressive pine trees that kept sprouting up on the fence line. Even though I failed botany in Chapel Hill, I had learned this invasion by pine trees was called new field succession. Leave a field open and the pines will take over. That's all I recall about plants, since I flunked the course because in botany lab I could not see any color change to the green slide when I added the red dye to it. I told the professor my singular results, but he just thought as usual I had not done the experiment properly. I never told him I was color blind because I didn't confirm the fact for another 25 years until my oldest daughter enlisted me in her high school genetics experiment on inherited traits. One trait was colorblindness.

Between drilling in a few new fence posts and stringing ten rods of wire at a time, there was a continuous running banter between Will and I about the weightier subjects of the cosmos. Youth was more certain in its views. Every mystery could be accounted for by science. Life began when electricity hit two elements which combined into a single cell to form life. Will's professor had repeated this process in an experiment in chemistry lab. My only replies to Will were inquiries: "Well Will, I imagine that ants, who are an organized and intelligent society, have their science, too. Do they know of Avogadro's Number, the Golden Mean, or the Unified Field Theory? Maybe there are explanations beyond even our science we can never comprehend any more than ants. We all have our limits." Will thought man was smarter than ants and dissented.

This Christmas Eve Donnie heard our chain saw and, as usual, rode out to help. He did not like how we were stringing the wire and offered some better alternatives. He then sped off to get a rat-tailed file to sharpen my chain saw which he could tell was dull by the way it had scorched the recently sawn pine stumps. Donnie spent the rest of the afternoon clearing the fence line with my saw and supervising the fencing education of his two ignorant college-educated laborers. It was a bright, sunny day, about 50 degrees. It was perfect weather to work and not sweat. Of course, winter is also the only time to do fence work since the sumac leaves and poison ivy growing on the old wire are not a problem.

Donnie pointed out two five-inch thick trees he didn't want us to cut down, and rerouted the last leg of our fence line to avoid them. That puzzled me since some future heir might mistake the new route as the old boundary line. Donnie volunteered the reason, "I saved these two young walnut trees for

your girls, Casey. When they have children, you can cut them down and they'll pay for their college educations." Will had been prepared to cut the walnut trees down since they had snuck into the old fence line like the pines did. Will the botanist could tell you all about the genus *Juglans*, but had never met two real walnut trees in the woods until then. I wonder if Will the scientist ever learned that the Latin name for the tree meant "Jupiter's acorn," or a nut fit for a god.

We voted to take off Christmas day and to reassemble the day after to finish our work. Instead, I eased out of the house after presents on Christmas to continue the job myself with only an ax. I enjoyed the simple tool. I didn't have to pull my arm out of its socket to start it or add gas and oil. As long as I kept the ax sharp, it would reward me with a quiet thud and fragrant flying wood chips. The neighbors couldn't hear the ax, and I hardly ever broke one. Donnie never heard the ax that day or suspected I was working or he'd have joined in the fun. The women at home were too busy preparing the gargantuan Christmas feast to miss me either.

As I went to bed Christmas night, my wife asked me, "Doesn't that sound like a fire truck?" I could hear the wail of a siren going down the dirt road toward where the Corbetts lived and the hurtful howl of the neighborhood dogs in response. "No, that's an ambulance," I said assuredly from a few times riding in a rescue vehicle with my friend, "Beefeye," an EMS driver. My friend, like everyone in Canetuck, also had a real name, but since he had a big head and eyes wide apart like a cow, no one ever bothered to call him by his Christian name, Demetrius.

Arabella Corbett, Donnie's only daughter, had gone to the Canetuck school near the Lyon Swamp Canal with my daughters. Our families usually exchanged some small gifts of food at Christmastime. Sometimes I bought Donnie a tool for his previous year's management consultant work. This year I had done neither. "Bell," as Donnie's daughter was known, called me the next day to tell me that her dad, Donnie, had a heart attack and died Christmas night. The sirens were too late.

Will and I went back to work on the fence the day of the funeral and walked up the hill to the Corbett graveyard for Donnie's service. We hung back from the crowd since we were still in our work clothes. Donnie would have done the same; no reason to waste work time changing clothes. He would not have been offended, and anyway, if he were, as he often said, "The dead are too proud to speak." Bell had rounded up a new young preacher who, amazingly, did a superb job eulogizing someone who rarely saw the inside of a church and whom the preacher had never met. I told the preacher I wanted him to do my funeral at the appropriate time. The preacher thought my request was a comment on his theology. I meant it as a comment on his imagination. After the service, Will and I went back to our fence work. Youth, yet unaccustomed to death, had a hard time understanding how someone could be so vital one day and gone the next. Science now did not give him a satisfying answer to the subject of death. I only guessed it was the cigarettes that killed Donnie.

During the rest of the week we vowed to build a three stone bench between the two walnut trees in honor of Donnie. We never got around to it; we had to finish the fence. Will had to go back to college. We stopped at the top of the hill as we left the field the last time and looked back to admire our work. At least we had erected some monument to mark our existence. A large shadow flashed over the hood of the Ford pick-up and landed in the tall fescue 20 feet away. He was some type of hawk. I have consulted probably a dozen bird books over the years and have yet to identify this genus of hawk. He had the raptors' downward, curving beak; grasping, yellow talons; and piercing, yellow eyes. The breast was light colored with dark ticking. His wings were light and dark brown. Like all of the Buteo genus, he was formed to float in the air with hollow bones, but he did not have the red tail nor characteristic smooth crown of our local hawks. Instead, his head was tufted like an osprey, but the color of bronze. Unlike every other hawk that kept a half mile out of range of man, this one deliberately stood in the grass 20 feet from the truck. The hawk watched intently and walked toward me after I exited the truck. Neither of us spoke. Eventually, as darkness gathered up from the ground, he got frustrated and jumped up into a large dead poplar tree. He talked to us in a sharp, high cry, "Kee-ah," which I jokingly took to mean "Good job." "Thanks," I laughed and drove off.

That night I told my wife what I had

seen. I was puzzled. Of purer Celtic ancestry, she quickly identified the hawk as Donnie's spirit come to look after me henceforth. She then went back to her needlework. Why hadn't I thought of that? My acceptance of the supernatural must have been bred out of my genes by all the German and French women that had intermarried with my Scotch and Welsh forebears. I've thought about her revelation for years.

Will had to go back to college. I was now alone to bush hog the back fields along the fence line anytime I wanted. I was three months behind in my work and the weeds I had hoped to cut down before their going to seed were still standing. In the too short weekend winter days of January I tried to cover too much ground too fast with the tractor. Donnie had told me I should always go slow in order to get a good cut when I bush hogged. I had disobeyed his order and paid the price for my impatience.

Somewhere in the foot-high fescue field I had just bounced over, I lost part of the lift arm assembly to the 3-point hitch of my bright orange tractor. The lift arm is the part of the tractor that attaches to whatever it's pulling. It is strong and big enough to pick the entire 5,000-pound implement off the ground. The vibration caused a lock nut to loosen and an 18-inch forearm-sized piece of orange-colored steel disappeared into the grass along with two 6-inch long eye bolts and nuts that held the assembly in place. Even though it was winter, the grass was still deep green. I was unaware the parts were gone until I finished my outside-to-inside spiral cutting of the field. Upon trying to leave the field, I found I could not raise the lift arm assembly to pick up the bush hog. It was dark. I knew no one would ever find those lost parts again, even if it were full daylight and even if the searcher were not color blind; the grass was too tall, too thick. I knew I would have to wait until the next Saturday to go to the farm equipment dealer in town to look up the part numbers in his catalogue so he could order new parts. Who knows how long it would take before I would get the order. Who knows when I could get back in the field to finish my work.

On Saturday I stopped at the tractor shed to make a list of all the lost parts I needed to order. I did not have to make that list. Neatly stacked on the flat steel deck of the bush hog were all the missing parts. No one was around. There was no note from any finder. I had no other neighbors but Donnie since the farm was bounded on two sides by creeks and the other two sides by roads. I did hear in the distance the "kee-ah, kee-ah" of a hawk in the wind. I looked up and noticed there were now two hawks in the sky where there had only been one on the farm for years before. One hawk had a bronze head.

Will got married many years ago and went back to yet another university to change careers again. He became an architect this time. He never worked on the farm again. Bell married and built a house on the Corbett land overlooking the spot where I had first seen the hawk by my truck. I never told her of these events. My girls are all grown and gone. They like the farm now. I continued to farm after I retired from the law until I got too old to put the heavy machinery on and off the orange tractor, but I still mow my fields twice a year to keep the weeds out. Even after all those years since Donnie died, I can still hear his tractor approaching every time my tractor stops, but that mystery would be understandable even to Will. I posed that same question to Will at his wedding, "If I can hear Donnie's tractor, who is to say he's not there?" Will replied, "It's just the wind carrying the sound from someone else's tractor up the hollow."

However, the deeper mystery would take us more study. "Well then, Will," I asked, "Did the wind find the tractor parts, fly them half a mile, and stack them neatly on the mowing deck?" Scientific theory was baffled and Will spoke no answer. He studied on that conundrum a while and returned to his philosophical roots. His half-joking thesis began by his proposal that the hawk had the physical ability to find the parts, pick them up, and stack the parts on the tractor, but Will couldn't accept the premise that it was Donnie's spirit in the hawk that directed the task.

"Well, young man, are you saying you do not believe there is such a thing as spirit?" I asked. He hesitated, "Not yet, but what's your answer, Casey?" he said, trying to put me off. My answer was a question back to him, "How do you define, measure, or test love?" "You don't," he replied. "You can't, you just know it's there." "Well then, son, if you know love exists, why not spirit?" I had him now. At least for a while he began to believe that Donnie's spirit was in the hawk and it was Donnie that directed the hawk to bring the lost parts back. I still believe it. In fact, I now know it.

I saw the second hawk for years thereafter every time I would crank up my tractor. "Hello, Donnie," I would say aloud, "thanks for your friendship. I'll try not to lose anything today, but if I do, put the parts in the usual place. By the way, what do you think of the line fence?"

"Kee-ah." ■

Tom Keith of Greensboro earned his BA degree from UNC-Chapel Hill, and his JD degree from Wake Forest University School of Law. He has worked in private practice, and has served as a prosecutor including five terms as solicitor for Forsyth County. Donnie's Hawk is the first story he has written since English 21 at UNC, circa 1962.

Lincoln-Douglas Debates (cont.)

states, such as Ohio, Indiana and Missouri were openly discussing secession from the Union, and he asked Douglas to use his popularity in these states to hold them from secession. Douglas began making pro-Union speeches, several a day, in cities along the disputed area. Exhausting himself, he developed pneumonia and died in 1861. On his deathbed he was asked if he had a message to send to his two sons, and he told them, "Obey the laws and support the Constitution." This is also the epitaph on his tombstone.

R. D. Douglas Jr is a great-grandson of Stephen A. Doglas. He has practiced law in Greensboro since 1936 and is still at it. For North Carolinians, it might be interesting to note that Senator Douglas' oldest son was Robert Martin Douglas, who practiced law in Greensboro and served on the North Carolina Supreme Court. His grandson, Robert Dick Douglas, was attorney general of North Carolina and also practiced in Greensboro. Two great great-grandsons, M. Douglas Berry and Robert D. Douglas III, are current Greensboro attorneys.