LISTSERV

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Networking – the Unmeasurable Benefit of IMLA Membership

Well, another IMLA Conference has come and gone. Kudos to the entire IMLA staff for a job well done in Atlanta. Reports are that this event was a record breaker for attendance. Aside from the "A+" CLE Programs provided, highlights included the opening reception, land use tour to SunTrust Park / aka home of the Atlanta Braves (followed by a game for some of us), a "Street Soccer" exhibition, and the usual softball game and golf tournament. A great time was had by all, and we left with most of us looking forward to our next trip. Don't forget DC next April and LaQuinta, California in September 2020.

Of course, we had our annual Water Cooler Reunion Wednesday evening during the Conference. This time the venue was the traditional Irish Pub atmosphere of Meehan's in Downtown Atlanta. For newcomers to the Listserv and/or Water Cooler, I revisit the original purpose for the Water Cooler--and now the spirit behind our annual reunions.

The Water Cooler is a listserv conceived by several IMLA members, chiefly our friend Bill Kearns from New Jersey. Our purpose is to discuss topics in a manner befitting the proverbial "Office Water Cooler," albeit digitally. We discuss weekend happenings, recipes, dance recitals for our kids, college football, hilarious court incidents, travel advice and recommendations, personal problems, and soon. The idea is to take "non-legal" discussions off the main listserv and continue them in a collegial and civil manner. It has functioned quite well. Even personal advice on how to handle a situation on the job can be received at times.

The Water Cooler Reunion grew out of regular unofficial meetings at the legendary (and now closed) Murphy's Irish Pub in the Woodley Park neighborhood of DC. It formally came into existence during the 2012 Annual Conference in Austin. The purposes are several: First, and most importantly, we can put a name with a face after all the on-line discussions. Secondly, the Reunion gives us a chance to relax and have a good time in an informal atmosphere during an eventful week. Lastly, it gives a chance for first timers or newcomers to meet others and become more comfortable in the IMLA atmosphere.

This year we had folks from South Carolina, Georgia, Florida, Tennessee, Missouri, Kansas, Alaska, Louisiana, New York, Texas, New Mexico, and New Jersey, among a few others. A first-time attendee said it was "the most fun I had all week. Do we do this every year?" I assured him we did, "but the benefits go beyond social," I advised him. He agreed.

You can do a lot of information exchange digitally, but there is still no substitute for the sit-down, face to face meeting. A lot of good legal and practical advice about our profession is exchanged at the Water Cooler Reunion, and because of the collegiality my informal "advice list" has grown to include a lawyer in nearly every state. The Water Cooler and the Reunion have helped engender the collegial nature that IMLA strives to provide. They are invaluable benefits.

As a now retired associate once said, "I now have the advice of thousands of colleagues at my fingertips. It is like belonging to a law firm with a branch office in every state." Indeed, just last week, I was able to refer a friend in a western state to good legal representation because of a connection made at a Water Cooler Reunion.

A toast to the congenial, civil and friendly atmosphere of our "community," created by IMLA and furthered by our annual reunions. Cheers!!! Additional kudos to IMLA Staff for allowing us to "advertise" this informal gathering through the IMLA Meeting App. It helped bring in a couple of new attendees. I look forward to seeing many of you again, and some of you for the first time,when we gather for the Ninth Annual Water Cooler Reunion in LaQuinta, California. Our site is yet to be determined, but it is always a good time! And don't forget the "Brad Cunningham Guarantee"--if you don't have a good time, the cost is on me!

Driving Under the Influence (DUI) or Driving While Intoxicated or Driving While Impaired (DWI) -- the moniker depends on what state you are in -- continues to be a problem in virtually every state in the Union. A listserv survey reveals that penalties for being convicted of DUI vary tremendously among the states. I start here in South Carolina, where a conviction for DUI First offense is tiered, depending on blood alcohol content (BAC). A DUI charge can be leveled beginning at .08, (8 parts per 10,000 parts of blood) and the penalty for a first offense conviction at that level is a fine of roughly $1,000 or up to thirty days in jail. That tier continues up to a

BAC of .10, where another tier takes over.

With a first offense conviction In the second tier, for a BAC of not less than .10 and up to .16, a first offense conviction will result in a fine of up to roughly $1,200, or up to 30 days in jail. The last tier is for offenses where the BAC measures .16 or greater. The punishment for a first offense conviction at this level is up to 90 days in jail AND a fine of roughly $2,200. Obviously, "the more severe the impairment, the more severe the punishment" is the idea conveyed by the statute. In a perfect world, this should strongly influence the behavior of most folks.

A survey reveals varied punishments around the country for similar offenses. One state has a mandatory ten-day jail period for a first offense conviction. Another state statute makes the refusal to provide a breath sample a criminal conviction., while others provide that a similar refusal is a civil matter--and the "automatic" six-month suspension is often not upheld, due to absence of the officer at an administrative hearing or some other administrative issue.

While penalties may vary, legislatures universally hold DUI to be a very serious issue. One common result is that defendants often find the "cost" associated with these incidents to be very high. A billboard in one state shows a prospective defendant providing a breath sample and exclaims "You just blew $10,000."

Whether statutes are strong or lenient, many can agree that what happens in the courtroom and the resulting caselaw can defeat a well-intended law. A case in point: I observed one jurisdiction where the requirement is that field sobriety tests be administered on camera. So, the officer in a specific case proceeded to give the tests to the defendant in front of his patrol car (with the defendant facing the camera). The argument was made, and the court ruled, that the flashing blue lights were a distraction to the defendant, and they contributed to the defendant's poor performance on the tests. The case was thrown out.

On to another case in that same jurisdiction, where an officer with the distraction issue in mind proceeded to administer the test—this time with the defendant facing away from the camera. Here, the case was thrown out because the court cited the requirement that it needed to see the defendant's face on camera. So, in this jurisdiction, the defendant can neither be facing the camera nor facing away from the camera.

What's next? Obviously, the practice would be to have the defendant perform the test from a "side view" provided by the camera. Enter the distraction issue again… A case gets thrown out because the defendant was distracted by the lights and kept looking to his side during the test, thus performing poorly. So, strictly speaking this jurisdiction is arguably left with a requirement that the field sobriety tests must be administered on camera, but that they cannot be administered with the camera angle being from the front, back or side of the defendant. Is there any practical way left? Stay tuned for further developments.

This is one easily-displayed example of caselaw eroding a well-meaning statute. Almost everywhere you look, it is widely agreed that DUI is a problem and that the jurisdiction needs to get tough on enforcement. But what often results from "tougher" statutes are "creative" caselaw and cries that law enforcement is being "too harsh" or "overzealous."

One thing is crystal clear about this matter, however. It will not get better until the powers that be get serious about curing it. If it is important enough, let the powers that be know about it!

Okay, now it's time for a little humor from the Water Cooler, as we often try to display. A recent digital discussion reveals the following real stories directly from our colleagues:

In a landlord-tenant case, a City Attorney recounted the amazed and puzzled expressions on the jurors' faces when a *pro se* property owner claimed that building violations for cockroach infestations were unwarranted because the cockroaches had migrated to his building for their summer vacation. The judge asked him if he wanted to change his testimony, but he asserted that it was a fact that Town 2 cockroaches migrated north to "summer" in Town 1. Needless to say, he was unsuccessful.

A colleague reports that a minor was charged with possession of tobacco. The defendant requested a trial and showed up for court with cigarettes in his pocket.

Another colleague reports a *pro se* litigant suing the city, alleging excessive force for injuries sustained during his arrest. He described his claim in his complaint as follows: "I was fleeing from a crime I had just committed when the police officers knocked me to the ground."

Then there was the defendant whose best form of entertainment was apparently making claims against the city. At one point he notified counsel that he would soon be getting married to George Soros. Counsel never received an invitation to the ceremony.

Lastly, we finish with a fishing story. A member reports a case wherein three gentlemen were tried in Magistrate Court for fishing without a proper license. It seems there was an Indian Reservation in this particular jurisdiction, and the three gentlemen began fishing off the reservation, but accidentally wandered onto the reservation, because a sign had been vandalized and torn down. "We had no idea we were on the reservation until this officer came up to talk to us," exclaimed one of the three defendants.

The judge, who had been summoned out of his potato garden at the last minute to hear this trial, was clearly annoyed by having to come to court that day. "Well, this is a waste of my time, being here for a fishing license trial. I got better things to do. Now, let me get this straight. The three of you were fishing, you accidentally wandered onto the reservation, and this officer found you. Is that correct?"

"Yes, that is correct" replied the appointed spokesman of the three. The judge looked annoyed and responded "You mean there were three of you and one of him? Why didn't you just beat his ***? It would have saved everyone a lot of trouble."

The prosecution rests, your honor… ML