



MSBA

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Christopher Lambert Honored by American Lawyers Alliance as Teacher of the Year

Since 1985, the American Lawyers Alliance (ALA) continues to honor and reward Outstanding Middle School and High School Teachers who have made significant contributions in the area of law-related education. Each year, ALA selects three (3) teachers nationwide from a highly competitive pool of applicants. Christopher Lambert, a teacher at Franklin High School in Reisterstown Maryland, was honored as one of the three recipients for the 2019 Teach of the Year Award.

Mr. Lambert started his journey to law-related education as an attorney at Whiteford, Taylor & Preston in Baltimore from 1983 to 1994. After volunteering as a mock trial coach for Baltimore Schools, he felt he could make a greater contribution as a public school teacher, and decided to give up his legal career and pursue a career in teaching. For thirty years, Mr. Lambert has been a mock trial coach at three different Baltimore-area high schools.

Three years ago, he helped create the *Franklin Academy of Law* to support students' law-related activities and enrich the school's law-related offerings. Thirty students are now active in the Academy, and prepare for and compete in mock trial and moot court competitions. They have competed in the Maryland Invitational Moot Court Tournament, and tournaments at Duke University, Princeton, and the Providence Foundation of Law & Leadership in Denver, CO.

Mr. Lambert has received numerous awards and recognition over the years for his work in law-related education. Ms. Shelley Brown, Executive Director of MyLaw, wrote "He instills a tremendous love of learning and the law in his students,

that quite frankly, is magical to witness. His ability to connect with his students, and to teach at levels far beyond the 'typical' classroom is virtually unparalleled...He is a force in law-related education and we, as a community of students, educators, legal professionals, and parents, are privileged to have him in the ranks." ●



The ALA Teacher of the Year Award Luncheon was held in San Francisco, California on August 9, 2019. MSBA President, Dana Williams, was on hand as Mr. Lambert received his well-deserved award.



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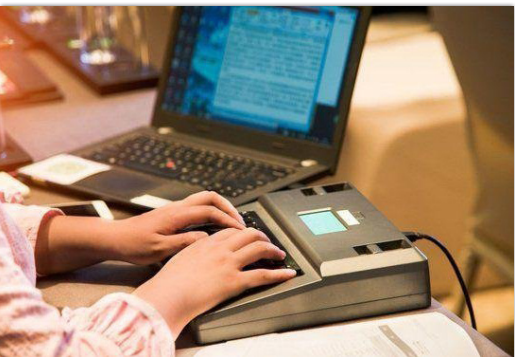
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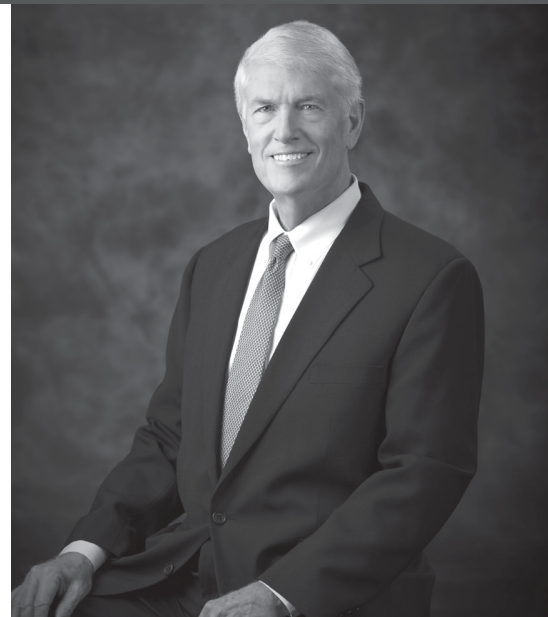
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18 Join the **Senior Lawyers' Section** for its bi-monthly meeting from 12pm - 2pm at the Maryland State Bar Association Headquarters in Baltimore, MD. For more information and/or to register please visit: www.msba.org/Senior-Meeting

21 Please join the **MSBA YLS Public Service Committee** in a *Coastal Clean Up* at Hemingway's Beach in Kent Island from 8am - 12pm. To register for this complimentary event please visit: www.kentislandbeachcleanups.com/events-1/2019-international-coastal-cleanup/form

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25 Join the **Consumer Bankruptcy Section** for its *Open Meeting* from 6:00pm - 8:00pm at The Pearl Spa in Fulton, MD. For more information and/or to register please visit: www.msba.org/CB-Open-Meeting

26 Join the **MSBA Learning and Publications Department** for the newest presentation of *What Business Lawyers and Litigation Lawyers Need to Know About Intellectual Property Law* beginning at 8:30am at the University of Baltimore in Baltimore, MD! Experienced faculty will provide the critical developments in the field of intellectual law to serve the needs of business lawyers and litigators; lawyers who sometimes counsel businesses or try cases involving patent, copyright, trade secret, right of publicity, and trademark law. For more information and/or to register please visit: www.msba.org/IP-Need-to-Know

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PRO BONO PROFILE

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John Warshawsky, Esq.
MSBA Member; PBRC Volunteer

With which PBRC project do you volunteer?

I volunteer through the Maryland Immigrant Legal Assistance Project (MILAP). I try to volunteer once a week at the immigration court, where I work with volunteer interpreters to provide legal advice to unrepresented people facing removal actions.

Far too many people have legitimate asylum claims – they're coming to the United States to get away from violence, but they face removal and can't get representation.

One reason I was interested in immigration is my own family history. We came to the U.S. in the late 1880's. I look at the people who are now coming to this country, and they're facing very similar challenges to the ones my family had. I don't want to see a child, or family, or hard working adult turned away, simply because they don't have access to representation to get lawfully admitted to this country.

Is there a client interaction that stands out for you?

I particularly remember the very first person I counseled. She was a 24-year-old woman from Honduras, with her 10-year-old daughter. The father of the daughter had been part of a narco-trafficking gang and he had been killed. This young woman was facing a death threat, and she and her daughter had fled the country.

They're obviously asylum candidates. I had the opportunity to counsel her, where to go to get protection, and wanting to make sure that she did get representation. If we had not been there to provide advice, she could very easily end up getting removed from this country, and have to go back and face real peril. Just being the key that gets someone in the door to get representation is important and meaningful.

What does the project do to make it easy to volunteer?

MILAP provides excellent mentors when you show up at court. I had no background in immigration work. Clinic leaders will brief you ahead of time, and we have a standard checklist. After I've interviewed the client, and before I provide advice, I sit down with one of the leaders and we review it and then I go ahead and give the advice,

comfortable that it's been vetted and that we're going in the right direction. Ultimately what we do at MILAP is very short. We meet with the clients, and based on their situation, we give them next steps, providing a path to the agency that would be best for them to talk to.

Does volunteering at the clinic lead to other pro bono opportunities?

Generally, clinic volunteers don't become the attorney in the immigration court proceedings. However, there are opportunities to do that, through MILAP's partner organizations. Many of those organizations also work with PBRC to provide training, so that you can choose to take a case – again, with a mentor.

How did you get started in pro bono service, and how does PBRC help?

When I practiced in D.C., I was involved with the Washington Council of Lawyers. I owe much of my enthusiasm for pro bono work to that organization. I have since moved to Baltimore to do pro bono work here. PBRC provides an opportunity for you to do work in an area that's different than your normal practice. You can make a huge difference in people's lives. To some degree, you may feel like you're getting outside your comfort zone, but PBRC provides you the support to make sure you're not going to make a mistake. You make a difference in people's lives, and you learn something too. You're a better lawyer because of it, and somebody's life is better as well. ●

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Laws for Claws: Regulating Maryland's Exotic Cats

BY CARSON H. BARYLAK AND KENNETH A. VOGEL

Big cats have captured the wonder of the American public. The nation mourned Cecil the lion after he was killed during a trophy hunt. When Louisiana State University's live mascot, Mike the Tiger, succumbed to cancer, the community's grief was palpable. Los Angelenos celebrate Griffith Park's most famous feline, a mountain lion known as "P-22," and "The Lion King" is breaking box office records.

This fascination with big cats has led Americans to treat them in ways that, regardless of intention, are ultimately harmful—especially to captive tigers, lions, leopards and cou-

gars which are held in backyards, basements, roadside zoos, and other substandard facilities.

In the case of tigers, estimates suggest that there are more tigers in captivity across the U.S. than

remain in the wild worldwide. Many are denied proper veterinary care, nutrition, stimulation, and space. Problematic animal displays, as well as exotic "pet" ownership situations, can be

observed in nearly every state, often subject to minimal or nonexistent oversight.

Exotic animals used for public display, unlike those held as pets or in private collections,

are governed by the federal Animal Welfare Act (AWA). Zoos, circuses and other exhibitors, as well as commercial dealers and transporters, are required to obtain a license from the U.S. Department of Agriculture (USDA).

When it comes to exotic "pets," however, there is no comprehensive federal law in place. Accordingly, private possession of animals is generally governed by state law. State statutes vary widely across the U.S. While some states prohibit the private ownership of dangerous and exotic animals—and, in some cases, restrict operation of animal displays—others place no constraints on the possession of deadly animals like big cats.

Maryland's exotic animal law is among the stronger state-level restrictions. Legislation enacted in 2006 prohibits the import, sale, possession and breeding of dangerous big cats, bears, nonhuman primates, reptiles, and other exotic animals. (Md. Code Ann., Crim. Law §10-621) Although this was an important step forward, the law included a loophole that remains commonplace in state exotic animal laws: it exempts federally licensed exhibitors. This loophole led to two key problems.

First, the law enabled exotic "pet" owners to obtain a USDA license simply to take advantage of the exemption. A USDA Office of Inspector General (OIG) audit found that 70 percent of licensees with four or fewer animals were doing just that. A subsequent audit acknowledged that the problem persisted because licensees are not required to prove that they are in fact exhibiting animals. USDA licenses are extremely easy and inexpensive to obtain but are quite difficult to revoke, which makes this loophole particularly worrisome.

Second, the law failed to create much-needed oversight for Maryland's roadside zoos—including those that house

“ USDA licenses are extremely easy and inexpensive to obtain but are quite difficult to revoke, which makes this loophole particularly worrisome.



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Truth, Lies and Power: A Farmer Fights The Feds

BY CHRIS BENNETT/FARM JOURNAL

"If I heard this story about someone else's farm I wouldn't believe it, but I have to because it's happening to me. I never hid a thing, always got permission beforehand, and did things the right way," says Charles Hood. "None of that mattered to the government."

In the slippery realm of wetlands and NRCS swampbuster regulations, does the government win even if it loses? In 2005, Hood purchased 30 acres of former timberland in southeast Virginia, sought USDA's approval to improve the acreage, and met with agency officials on scores of occasions across a decade of land improvements. In 2016, NRCS came knocking and claimed he was in violation of USDA's wetlands and swampbuster regulations.

Two years later, on June 14, 2018, Hood, 62, prevailed in court when the presiding judge weighed the facts and dismissed NRCS' claims. Yet, Hood's victory may ring hollow. Within weeks of the ruling, NRCS sent Hood a letter announcing a new wetlands swampbuster determination. (The letter also requested a response regarding an NRCS site visit by Aug. 10.)

Essentially, the court decision may be a mere inconvenience to a federal agency determined to place full regulatory power across Hood's ground. Out with an old wetlands determination, in with a new one. Meanwhile, a farmer's future hangs in the balance. "I trusted and was lied to over and over by NRCS officials. I don't think the judge believed a word they said. They may know how to check boxes on a piece of paper, but they don't know a thing about farming. I'm a private man, but I want the public to know what has happened."

The gravity of Hood's case leads directly to uncomfortable questions for U.S. landowners: When a wetlands determination is ruled invalid in court, yet the associated agency simply pushes the reset button, does the court decision mean anything of significance to a landowner? Backed by unlimited resources, how many bites at the same wetlands apple does a government agency get?

"Not Even Close"

In 2006, just two miles above the North Carolina line, 30 acres of

“
When a wetlands determination is ruled invalid in court, yet the associated agency simply pushes the reset button, does the court decision mean anything of significance to a landowner?”

cutover tree farm ground came open in Southampton County, and the possibilities grabbed Hood's attention. The 40-year, part-time employee of the Farm Service Agency (FSA) and small farmer already grew 100 acres of corn, cotton, peanuts and soybeans on 100 rented acres of adjacent farmland, and at \$800 per acre, the former timber ground was priced to move. Hood was a dawn-to-dusk grinder, and he wasn't going to allow opportunity to skate, regardless of how much restoration work might be involved.

The property was relatively flat and surrounded by ditches on all sides. Hood brought in retired NRCS soil scientist Jerry Quesenberry (1975-2005) to take a long look at potential wetlands issues. "Jerry is as smart a wetlands expert as you'll find and that's what he's done across his whole career. He checked the acreage thoroughly and said it was very well drained and could make for good grain land. With the right work and cleanup, I knew I could

get it ready for soybeans."

Quesenberry advised Hood to follow procedure and check with appropriate agencies, including the U.S. Army Corps of Engineers. "Charles wanted to do ditch work and I told him to check with Corps. The Corps gave him full permission to do maintenance on the existing ditches. The property is totally isolated and has very good drainage."

With three decades of wetlands delineation under his belt, Quesenberry is adamant: "The acreage is not a wetland and doesn't reach the three criteria of hydrology, hydric soils and predominance of wetland vegetation. Boiled down, the property does not meet hydrology or vegetation criteria. It's got spots of hydric soils, but even those were there prior to the property ever being ditched. It's not even close."

"A judge has seen the evidence and hammered NRCS' behavior," Quesenberry adds. "But now NRCS gets to go right back to the drawing board and do it again? As a 30-year NRCS employee, I

want this whole story to come out to show people how a small farmer with a tiny piece of land is being harassed by ego-driven government officials."

Bureaucratic Crosshairs

Excited to restore the acreage, Hood leaped into EQIP, pollinator plots, cover crops, minimum till, stump shearing, timber path grating, and more. From Hood's perspective, he was improving the ground with every move countenanced by NRCS. (NRCS declined comment on all FJ questions related to the Hood case.)

"They told me part of my land was a farmable wetland and I did all my work in the open. I never dreamed I was doing anything wrong. NRCS was always involved on my land and one of their officials, Yamika Bennett, personally met with me at least 60 times over the years. She never said nothing about me doing things wrong, I trusted them all." (Bennett, a district conservationist with Virginia NRCS, declined comment related to the Hood case.)

By 2014, Hood had soybeans on part of the property and averaged 40 bu. per acre—close to the county average. He followed in 2015 with 35 bu. per acre. (Hood hasn't been able to plant crops on the land since 2015.) The property was beginning to respond to restoration efforts and Hood felt he was sliding building blocks into place. But in a matter of months, the entire foundation of his effort was quaking. When an NRCS computer spit out the location of a Southampton County farm for a random spot-check, the bureaucratic crosshairs zeroed on the name of Charles Hood.

60 Times

"In May (2016) I was on top of the world with two solid crops and suddenly things went crazy when NRCS made a new wetlands determination. They sent out an official named Greg Hammer and he says my land is a wetland and what I've been doing is illegal. I'm a simple man and was suddenly

dealing with officials that were arrogant and smug beyond belief. There was no way to reason with them. They were checking off boxes, coming up with whatever data they wanted, and all I could do was watch. You don't know what helpless is until you've experienced this type of control." (Citing pending litigation, Hammer, a resource soil scientist with Virginia NRCS, declined comment related to the Hood case.)

Sammy Drake, 71, grows peanuts, corn, cotton and soybeans in Southampton County. He was on-site during a June 29, 2017, NRCS personnel visit to Hood's land. "It is hard to describe the condescending attitude from the NRCS people I witnessed. Charles Hood is the single most honest man I know and you won't find anyone who has helped more farmers. This is how NRCS treats him? Only unaccountable people would dare to behave this way."

Labeled a wetlands violator, NRCS wanted Hood to return approximately \$35,000 in EQIP and other program payments. Hood took his protests from the county committee to the state committee and then to the National Appeals Division. He obtained the services of attorney Gary Baise, OFW Law. Baise, wielding a lifetime of wetlands-swampbuster legal experience, was laser-focused on addressing the facts. Since the inception of the Clean Water Act in 1973, Baise has seen innumerable wetlands-related cases filter through the U.S. court system, but he contends the Hood case is uniquely filled with "mendacity and duplicity" from agency officials.

Pulled directly from Baise's NAD brief (Case No. 2017E000755), submitted March 5, 2017: *T25864 [Hood's land] has been a tree farm for decades and a soybean field for seven years. Hydric soil does exist on the property but there is no evidence, only conclusions, in the record of hydrology or prevalence of hydrophytic vegetation on the property ... just conclusions by a NRCS employee and his work has*



never been double checked by anyone else in NRCS.

Baise contends NRCS' actions related to Hood's land during the 10-plus years following 2006 are entirely incongruent with the agency's enforcement action in 2016. "NRCS knew it was clear-cut timber. They put him in the EQIP program and paid him," Baise explains. "Now they want the cash back and pretend he was making all these violations? Are you kidding? They lied and they are out of control. This case is a stunner and they didn't want a judge or the public to know any of this. Their personnel met with Hood on countless occasions and even had one official meet with him over 60 times."

Pulled from Baise's March 5, 2017, NAD brief: *Testimony by Ms. Stokes [Yamika Bennett] indicates that over the next 11 years, possibly 60 meetings between Appellant and Ms. Stokes occurred to discuss activities which could be taken on the land designated as converted wetland.*

"Go across the nation and you can find some wonderful people in NRCS. But in this case, NRCS agents were caught dead-wrong. They won't admit a thing, but they'll sure double-down, even if it means running over a small farmer with 30 acres and ruining him," Baise adds.

Significantly, in 2016-2017 paperwork filled out regarding Hood's alleged violations, NRCS never mentioned the site was atypical and had been clear-cut. Additionally, NRCS didn't admit the site had ditches on all sides of the property, according to Baise.

Fired by Accident?

Hood's case (*Charles Hood, Jr. vs Farm Service Agency*) was assigned to Administrative Judge Christopher Hanifin, but prior to the NAD date, FSA terminated Hood's employment. "When the judge found out they fired me, the government literally told him it was a clerical error. I'm not kidding. Inside the courtroom, they seriously claimed that after 40 years as an FSA employee, I had been fired by accident. They actually tried to slide that past the judge in court. That tells you what you need to know about my case and their arrogance."

"They fired Hood right before the trial and the judge was outraged, so they gave him his job back. It was unreal," Baise echoes.

Hanifin was tasked with ruling on the preponderance of evidence; a judgement based

on facts. On its face, the case was simple: Did NRCS do its job properly on the Hood property?

The government's position unraveled on the witness stand, according to Baise, who navigated the minutia of wetlands complication. "They hadn't followed procedure. They just said it was a wetland and expected their word would rule the day. It was disgraceful and Judge Hanifin saw through it all. We caught them in repeated lies and it didn't go over well in court."

Again, pulled directly from Baise' brief: *On September 18, 2006, NRCS employees Yamika Stokes (Bennett) and Greg Hammer allegedly completed a wetland determination on T25864. There are no exhibits, calculations, or records on data forms that record that NRCS employees followed the procedures as required by the NFSAM or the COE 1987.*

Additionally, from Baise's brief: *NRCS and Mr. Hammer used discretion and acted arbitrarily, capriciously and recklessly in determining T25864 is a wetland. No evidence exists in the record showing Mr. Hammer's work was ever checked. Jerry Quesenberry, an expert wetlands delineator with 17 years experience with NRCS, testified that Mr. Hammer was wrong in his conclusions regarding T25864.*

Quesenberry's credibility held strong on the stand. "I knew it wasn't a wetland and explained why to the judge. I backed up what I said with data and on-site testimony. He was getting evasive BS from the other side, sort of like evasion tactics."

In the footnotes of Hanifin's eventual ruling, the judge wrote remarkably tell-tale praise related to Quesenberry's testimony: "I base my credibility finding on Appellant's [Hood] retired NRCS soil expert's [Quesenberry] testimony, professional and earnest demeanor, lack of motive to achieve a result, unwavering conviction and lack of hesitancy when answering questions, and in detailed statements throughout the evidentiary record. Finally, I find credible the expert's capacity to recollect and communicate honestly events, including not stating conclusions unless the soil expert was sure of the answer and its veracity, especially when otherwise doing so would be self-serving or push the bounds of believability."

In its closing argument, sub-

CONTINUED ON PAGE 22



U.S. Court of Appeals Slams Conservation Service

BY GARY H. BAISE

Last week the United States Court of Appeals 7th Circuit handed down a decision which should cause shame and embarrassment at the U.S. Department of Agriculture. A three-judge panel reviewed an NRCS wetlands case and asked, "Did the USDA examine relevant factors and relevant data or articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made?...Did the agency evaluate the significance -or lack of significance- of any new information presented during the agency appeals process? The answers to all of these questions are no."

Last week the United States Court of Appeals 7th Circuit handed down a decision which should cause shame and embarrassment at the U.S. Department of Agriculture. A three-judge panel reviewed an NRCS wetlands case and asked, "Did the USDA examine relevant factors and relevant data or articulate a satisfactory explanation for its action including a rational connection between the facts found and the choice made?...Did the agency evaluate the significance -or lack of significance- of any new information presented during the agency appeals process? The answers to all of these questions are no."

A blistering 47-page analysis by a U.S. Court of Appeals judge goes on to discuss a case which started in 1987. Ronald Reagan was president and cell phones were just being adopted by consumers. And the original farm owner is now long gone, but that didn't stop the government from digging in its heels despite overwhelming evidence. What happened.

The case involves the Boucher farm in Hancock County, Ind. In late 1987, Mr. Boucher received a USDA notice that his farm contained wetlands even though a national wetland inventory taken later in 1989 did not identify any wetlands on Mr. Boucher's farm. This case involves the removal of nine trees by Mr. Boucher. The nine trees covered 12/10,000ths of an acre. USDA told Mr. Boucher

“ This case involves the removal of nine trees by Mr. Boucher. The nine trees covered 12/10,000ths of an acre.

that he had a potential wetland violation based on the tree removal. An NRCS employee found that Mr. Boucher's property had been drained through the installation of tile, which turned out later to be a lie by an NRCS staffer. The NRCS employee also believed because Mr. Boucher's land had been farmed, she needed an offsite comparison field to compare with the Boucher farm.

She chose an unfarmed area in a depression which was "indisputably" a wetland. The Court opinion points out that at this point her assessment would not even have made it through a first level review. But it did! Mr. Boucher pointed out the nine trees he removed were upland plants and were not likely to be found in wetlands. By February 2003, Mr. Boucher received a notice from NRCS demanding he plant 300 trees per acre for 2.8 acres of alleged converted wetland. Mr. Boucher then informed the local Farm Services Agency (FSA) committee that the only trees he removed were not wetland plants. Mr. Boucher met with the Indiana state conservationist on

September 9, 2003. Mr. Boucher left this meeting believing he had proved his point. Case closed?

Not really. Thus, for 10 years there was no communication from USDA -- until late 2012.

In February 2004, Mr. Boucher passed away. His widow, Rita Boucher, took over the farm. In 2012 a new tenant wanted to remove an old house and barn on the property. Mrs. Boucher sought permission from USDA to do so. In 2012, NRCS claimed it had never made a final decision after Mr. Boucher met with the Indiana state conservationist in 2003. So, NRCS experts again visited the farm on January 13 and 14, 2013, when over three inches of rain fell on the farm causing 11 inches of snow to melt on the ground. In another "stupid" decision, NRCS claimed there were puddles in several fields. Experts used the same comparison field as in the 2002 assessment and determined there must be tile under Mrs. Boucher's field. (There was none.) Finally, in March 2013, USDA notified Mrs. Boucher that she had wetlands and that she could appeal determination to

USDA's National Appeal Division.

Mrs. Boucher appealed because she could not believe the removal of nine trees, nearly three decades earlier, impacted her farmland. Mrs. Boucher submitted evidence to Administrative Law Judge that her farm "...1) did not appear to have any drainage tiling; 2) to the extent they did have any tiling, the tiles were installed before 1985; 3) did not demonstrate inundation or saturation with water; 4) were not in a depression; and 5) previously had trees that were not hydrophytic." NRCS claimed the nine trees had altered the hydrology of the site.

The Court notes sarcastically on each of these points that anyone with "common sense" and a sliver of understanding of agriculture would have concluded this case at this point. The Court slammed the USDA hearing officer, claiming that "Rather than grappling with this evidence, the hearing officer used transparently circular logic, asserting that the Agency experts had appropriately found hydric soils, hydrophytic vegetation, and wetland hydrology..." In 47

pages, the U.S. Court of Appeals ridicules and suggests NRCS agents did not tell the truth and that NRCS experts are either willing to lie or simply do not know what they are doing.

Existing leadership at the USDA should read this damning decision carefully and make changes accordingly. This case undermines faith in the honesty of USDA. Mrs. Rita Boucher was told by the Court she should be awarded all appropriate relief to which we should all say Amen! ●

The opinions of the author are not necessarily those of Farm Futures or Farm Progress or the MSBA.

Gary H. Baise is an Illinois farmer and trial attorney with Olsson Frank Weeda Terman Matz PC, Washington, D.C. Mr. Baise is a member of the Council of the MSBA Agriculture Law Section and also serves as outside General Counsel for the U.S. Grains Council, Agricultural Retailer's Assn., Nat'l Sorghum Producers, and Counsel to the American Soybean Assn.

This article was originally published in the August 13, 2019 edition of Farm Futures, a Farm Progress publication ("Farm Futures") and has been reprinted in the MSBA Bar Bulletin with the express approval of Farm Futures. The MSBA Agriculture Law Section sincerely appreciates the granting of this authorization.

Patent Eligibility Exceptions Threaten to Swallow Patent Law Whole

BY DAVID TAYLOR AND JOHN WHITE

What sorts of inventions may be patented continues to be the most debated topic under U.S. patent law. 35 U.S.C § 101 defines patentable-eligible subject matter as “any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof.” Despite that broad wording, the U.S. Supreme Court has long held Section 101 contains “implicit exceptions,” namely laws of nature, natural phenomena, and abstract ideas, that are not eligible for patenting. Software and business-method patents are abstract ideas under current laws. See *Alice Corp. v. CLS Bank Int’l*, 573 U.S. 208, 216 (2014).

Oxford’s online dictionary defines “abstract” as “existing in thought or as an idea but not having a physical or concrete existence.” One might think the Supreme Court or the U.S. Court of Appeals for the Federal Circuit, which has exclusive subject-matter jurisdiction to hear patent appeals, would have adopted an accepted definition or acted as its own lexicographer to define the term “abstract” in the course of invalidating patent claims as abstract ideas. Instead, the Federal Circuit has sidestepped the issue by citing and building on an ever-growing body of precedent to determine what is, and what is not, an abstract idea. This approach has not only led

to inconsistent decisions, but to an expansion of the abstract idea exception well beyond software and business-method patents. The patent bar is left to grapple with constantly changing law.

In *Alice*, the Court cautioned against the slippery slope posed by judicial exceptions such as abstract ideas:

At the same time, we tread carefully in construing this exclusionary principle lest it swallow all of patent law. *Mayo*, 566 U.S., at ___, 132 S.Ct., at 1293-1294. At some level, “all inventions... embody, use, reflect, rest upon, or apply laws of nature, natural phenomena, or abstract ideas.” *Id.* at ___, 132 S.Ct.,

at 1293. Thus, an invention is not rendered ineligible for patent simply because it involves an abstract concept. See *Diamond v. Diehr*, 450 U.S. 175, 187, 101 S.Ct. 1048, 67 L.Ed.2d 155 (1981).

Alice, 573 U.S. at 217.

The Federal Circuit has paid little heed to the Supreme Court’s cautionary warning. In one of its most recent decisions, the Federal Circuit reversed a district court’s ruling that patent claims for a movable barrier operator (e.g., a garage door opener) were not directed to an abstract idea. *Chamberlain Grp. v. Techtronic Indus. Co.*, ___ F.3d ___, 2019 WL 3938278 (Fed. Cir. Aug. 21, 2019). The Federal Circuit whittled the

patent claims down to the invention’s perceived advancement over the prior art of “wirelessly communicating status information about a system.” The Federal Circuit equated the advancement “to abstract ideas we have found in our previous cases.” In doing so, the Federal Circuit gave no weight to the concrete arrangement of physical components of the garage door opener recited in the claims on the ground that the components were “off-the-shelf technology [used] for its intended purpose.”

Chamberlain comes on the heels of *ChargePoint, Inc. v. Sema-Connect, Inc.*, 920 F.3d 759 (Fed. Cir. 2019), which I discuss in the April 2019 MSBA Bar Bulletin.

Affirming a decision from the Maryland district court, the Federal Circuit found ChargePoint’s patents invalid as directed to an abstract idea over ChargePoint’s argument that the claims recited “a concrete arrangement of [physical] components that enables users and site hosts to access and control electric-vehicle charging stations.”

One has to wonder how we, and by “we” I mean the Federal Circuit, have arrived at a point that a garage door opener and charge transferring devices for recharging electric vehicles, which are physical and concrete devices that serve utilitarian pur-

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DPW Water Bills are Out Again: What to Do if Your Client's Bill Wasn't What They Expected

BY MARGARET HENN

After nearly four months of their billing system being down due to a ransomware attack, the Baltimore Department of Public Works has begun issuing water bills again. According to a recent press release from DPW, bills will be sent out in batches between early August and early September. Customers will be in for some high bills, which include several months of charges as well as 9.9% rate increase that went into effect on July 1st. The average residential bill will likely reach \$300-400.

For several years, volunteer attorneys have been assisting clients struggling with their water bills at legal clinics, co-sponsored by the Pro Bono Resource Center of MD (PBRC) and Maryland Volunteer Lawyers Service (MVLS).

In addition to affordability challenges, Baltimore residents at all income levels face disputes about their water bills, which are difficult to resolve. Since DPW removed its informal conference process in 2016, there has been no formalized way for customers to challenge their bills.

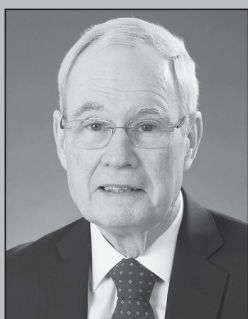
In December 2018, Mayor Jack Young (City Council President at that time) introduced the Water Accountability and Equity Act as a holistic approach to address both affordability issues and the dispute process within DPW. This bill has the support of a wide range of advocates who compose the Baltimore Right to Water Coalition, as well as all members of City Council. At a May hearing,

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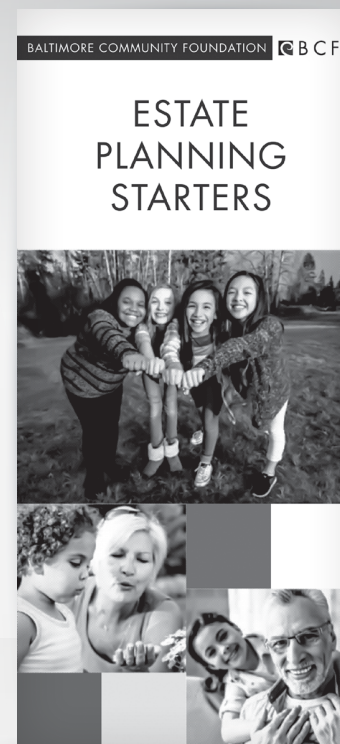


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Continuing Legal Education Opportunities

Learning & Publications Department: Raising the Bar for Education

BY ANDREA TERRY, ESQ.

Summer is over but the CLE calendar is heating up, with an all new program on Artificial Intelligence (AI) and Cybersecurity in the Legal Profession on September 19, in Rockville. Learn how artificial intelligence can help law firms streamline tasks for everything from litigation

preparation to contract drafting, to client communication. Increase your comfort level and understanding of this new tech frontier that isn't a threat, but rather an opportunity for lawyers

to increase efficiency and accuracy in their practice. Keep an eye on the MSBA website <http://msba.inreachce.com> for details on this and all upcoming live programs, webcasts and webinars.



Additional information and online registration available at msba.inreachce.com

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- **What Business Lawyers and Litigation Lawyers Need to Know About Intellectual Property Law** | September 26, 2019 | Baltimore
- **Workers' Compensation Evening Series** | October 2, 10, 16, 23, 30, November 6, 2019 | Columbia
- **How to Conduct an Effective Workplace Investigation** | October 3, 2019 | Baltimore
- **Nuts and Bolts of Medicaid** | October 10, 2019 | Columbia
- **Essentials of Maryland Practice** | October 22-23, 2019 | Towson
- **2019 Criminal Law Update** | October 28, 2019 | Baltimore
- **The Maryland's New Elective Share Law: Adjustments and Opportunities** | November 4, 2019 | Columbia
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Bullying and Tips to Manage It

BY LISA CAPLAN

With school underway, bullying is a topic that many parents and kids are talking about. Each year, thousands of children and teens are on the receiving end of bullying, causing them to be afraid to go to school, walk the halls alone, and not participate in after school activities. These children often feel helpless, vulnerable, isolated, and oftentimes suicidal – not knowing whom to turn to in fear that the bullying will get worse.

Whether your child is in elementary school or high school, we all need to understand that there are many forms of bullying, and how severe bullying can become. Every child deserves a safe learning environment. Educating yourself on bullying and the long term effects it can have on a child or teen is the first step in stopping it.

What is Bullying?

Bullying can occur in any social environment, but occurs most often among school age children. It involves unwanted aggressive behavior, where a person is picked on repeatedly by an individual or group. It involves a real or perceived power imbalance, typically in the form of physical strength or social standing.

A bully targets someone they see as weak or different. Some reasons someone might be bullied include:

- Religion
- Race
- Appearance
- Behavior (e.g., shyness)
- Disability
- Perceived sexual orientation

Whatever the reason, bullying is a way for the bully to feel in control and often is a way for the bully to hide their own (internal) weakness. Bullying can take many forms including:

Verbal: includes talking to someone or about someone in a way that is hurtful or unkind, for example:

- Taunting
- Name calling
- Sarcasm
- Spreading rumors
- Teasing
- Gossiping

Emotional: includes behaviors that exclude, upset or embarrass someone including:

- Cyber bullying uses technology to send cruel emails, instant messages, or postings to humiliate, torment or embarrass someone

Physical: includes:

- Tripping
- Hitting
- Hair pulling
- Biting
- Kicking
- Shoving
- Any interference with someone's property for example stealing or damaging their property

Sexual: includes any behavior that targets someone because of their gender and involves unwelcome sexual behavior, including:

- Unwanted physical contact
- Sexual comments



Steps to take if your child or teen witnesses another kid being bullied:

- Teach your children and teens to stand up to bullying and not ignore what they see (e.g., when they see others being bullied).
- Teach your child to evaluate the situation. For example is the bullying putting someone in danger, is a child being left out or did someone say something hurtful? Each situation may need to be handled differently.
 - Teach your child to make choices on how to handle the situation depending on what it is. You can practice by giving your child scenarios and practicing what to say or do. For example, they can speak up and advocate for the child or get help.
 - Help your child practice what they may want to say. For example, "Stop, that is a very hurtful thing to say." Or "The rule is everyone can play the game." If someone is in danger the best action would be to get help.

What to do if you think your child is being a bully:

- Don't Panic. Children bully for many reasons including: testing boundaries, insecurities, needing to feel in control or possibly an underlying mental health problem.
- Listen to what your child has to say and thank them for sharing with you.
- Share openly and honestly any information that you have heard about their bullying.
- Don't lecture. If your child can't trust you or your lecturing to them they won't feel safe to come and talk with you again.
- Be aware of your own behavior, prejudices, and opinions. Children watch and listen to their parents and tend to model their behavior.
- In a supportive manner share your feelings about bullying.

- Talk with your child about how to end the bullying.
- Talk with a professional.

Long term effects of bullying

- Depression
- Anxiety
- Low self-esteem
- Sleep problems
- Illnesses due to anxiety and stress
- Headaches
- Higher rate of substance abuse
- Difficulty making friends and uncomfortable in social situations

Bullies also experience long term problems. Statistically the bully has a higher rate of being involved in criminal behavior and can also suffer from higher rates of mental health and substance abuse.

For assistance, please contact the Lawyer Assistance Program for **free, confidential counseling**. We have a network of counselors throughout Maryland. Jim Quinn, Lawyer Assistance Director, (443) 703-3041, jim@msba.org; Lisa Caplan, LCSW-C, Associate Director of the Lawyer Assistance Program, (443) 703-3042, lisa@msba.org. Toll Free 1(888) 388-5459. ●

Lisa Caplan, LCSW-C has over 20 years experience in her field, and extensive experience working with lawyers and judges in the areas of mental health, substance abuse and trauma. In her free time she enjoys spending time with family and friends, paddle boarding, sailing, rock climbing and doing triathlons.



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Meredith Lathbury Girard

Mid-Shore Pro Bono (MSPB) is proud to announce **Meredith Lathbury Girard, Esq.** has joined their team as the organization's first-ever Managing Attorney. In this role, Girard will oversee and manage all of MSPB's legal projects, including the Economic Stability Project, Elder Law Project, Family Law Project, and Vulnerable Populations Assistance Project. This newly-created position is critical to expanding MSPB's capacity to serve the community's legal needs.



Amy L. Edwards

Holland & Knight partner, **Amy L. Edwards**, the co-chair of the firm's National Environmental Team, has been elected a fellow in the American College of Environmental Lawyers (ACOEL). She is one of 25 new fellows and one honorary fellow inducted into ACOEL this year. They were selected for their distinguished experience, high standards of practice and substantial contributions to the field of environmental law.

Send your latest news and updates for inclusion in Et Alia: BarBulletin@msba.org.

OBITUARY



STANTON J. LEVINSON

Stanton J. Levinson, 78, died August 17 following a lengthy illness. After graduating from the University of Maryland law school and clerking for the Honorable R. Dorsey Watkins of the US District Court for the District of Maryland, Levinson entered private practice. Over more than 40+ years in boutique and solo bankruptcy practices, he represented debtors and creditors, conducted seminars, testified as an expert witness, and authored numerous papers.

He leaves behind his wife of 54 years, Terry, and daughters Deborah and Judith. Friends or colleagues wishing to honor Levinson's memory may donate to the University of Maryland law school.

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Anne Arundel County District Court Veterans Treatment Court adds coordinator position, looks for qualified participants

ANNAPOLIS, Md. –The Anne Arundel County District Court is looking for qualified defendants to take part in its veterans treatment court, an innovative program for veterans.

The court-supervised, comprehensive, and voluntary treatment-based program is designed for veterans charged with misdemeanor offenses and concurrent jurisdiction felonies in the District Court and addresses the needs of military service members in Anne Arundel County who have committed crimes as a result of substance abuse or mental health issues. Services include treatment and other resources to enable each veteran to live lawfully and independently.

The Anne Arundel County Veterans Treatment Court is approaching its first anniversary as an official court program. It launched in November 2018 under District Court Judge Thomas V. Miller III, who noticed several veterans and active duty military service members coming into his courtroom. Some faced physical challenges and had many underlying issues, such as substance use and mental health concerns. As a result, Judge Miller started the Anne Arundel County Veterans Treatment Court to connect these individ-

uals to the services they needed and deserved as veterans.

"Presiding over the veterans treatment court has been a great honor and is the most humbling experience I have had in the legal profession," Judge Miller said. "I have had three huge photos over my desk in my chambers since the day I was sworn in. One of them is a D-Day photo which I look at every day and think to myself, 'These service members handled seemingly impossible situations with courage and honor, many giving the ultimate sacrifice for others.' With that thought in mind, I know I can handle the day."

The veterans treatment court started as a special docket in the Anne Arundel County District Court in May 2016. Since then, 25 veterans have successfully completed the program.

The Anne Arundel County Veterans Treatment Court combines the structure and accountability of a court program with a team of local justice partners and community organizations and providers who work together to deliver a coordinated treatment response for veterans. Led by Judge Miller, the team includes representatives from the Office of the State's Attorney, Office of the Public Defender, Probation and Parole Office, United Way of Central Maryland,

U.S. Department of Veterans Affairs, M&M Behavioral Health Solutions, Arundel Lodge, Baltimore Station, McVet, Maryland Department of Labor, Licensing and Regulation, Homeless Persons Representation Project, and Anne Arundel Community College.

Since the program's inception, a coordinator position has been added as a funded position.

"The veterans in our program are driven," said Valeree Tolios of the United Way of Central Maryland, who is the coordinator for the Anne Arundel County Veterans Treatment Court. "They are not only committed to their treatment, but they are committed to each other's success, as well. Despite their legal and behavioral health setbacks, the program participants hold themselves with honor and resilience, which is inspiring."

Eligible candidates are typically U.S. military veterans and active duty service members who have been charged with non-violent offenses in the district court. Participants are referred to the program by the state's attorney, judges, lawyers, and district court commissioners. For more information about participating in the Anne Arundel County Veterans Treatment Court, email valeree.tolios@uwcm.org or call 410-895-1495.

CONTACT:

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Public Information Officer
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410-260-1488

Terri Charles
Asst. Public Information Officer
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OCTOBER

2 The MSBA Department of Learning and Publications is excited to offer the *Workers' Compensation Evening Series* beginning 10/2, 10/10, 10/16, 10/23, 10/30 and 11/6 from 6-8 p.m. in Columbia, MD! This six-week comprehensive course will present the fundamental and practical concepts of workers' compensation. Substantive and procedural aspects of the Workers' Compensation statute, hearings and appeals will be thoroughly discussed. Our outstanding faculty will address tactical considerations and the mechanics of Workers' Compensation practice from both the claimant and defense perspectives. Topics to be covered include: Maryland Workers' Compensation Act; Occupational Diseases; Subsequent Injury Fund; Vocational Rehabilitation; Workers' Compensation Commission Practice; Third Party Practice; and Appellate Practice and Procedures. For more information and/or to register please visit: www.msba.org/Workers-Comp-Series

3 The MSBA Department of Learning and Publications is excited to offer an all new presentation: *How to Conduct an Effective Workplace Investigation* beginning at 9:30am at the University of Baltimore in Baltimore, MD! Whether it is responding to an employee complaint, a customer complaint, a government investigation, or some other issue, it seems that companies are devoting more time and resources to conducting investigations. The appropriateness of the company's response can potentially help the company avoid liability, maintain a customer relationship, and protect its image, among other things. Topics for this presentation include identifying reasons why investigations may be conducted, developing strategies for structuring investigations – from understanding how investigations are initiated (e.g., intake process, or responding to a lawsuit or public relations matter), to identifying potential investigators (including the role of legal counsel), and forming strategies for fact gathering and more! For more information and/or to register please visit: www.msba.org/Workplace-Investigation

10 Join the MSBA Elder Law and Disability Rights Section for the newest presentation of *Medicaid Nuts and Bolts* beginning at 8:30am at the Loyola Graduate Center in Columbia, MD. Get the latest from experienced faculty on the latest Medicaid case law, gain insight from several "quickfire" sessions on Transmittal MR-159, tips for filing a successful Medicaid application and more. Join a panel discussion on Medicaid eligibility and policy with top practitioners and a Maryland Department of Health Medicaid policy official. This is an essential program for any attorney and support staff practicing Elder Law! For more information and/or to register, please visit: www.msba.org/Medicaid-Nuts-And-Bolts

15 The MSBA Real Property Section Commercial Real Estate Discussion Group presents *A Sign of the Times: A Discussion on Sign Regulations in Baltimore City, Howard County, and Baltimore County* from 12:15pm - 1:15pm at Venable LLP in Baltimore, MD. For more details, please visit: www.msba.org/Sign-Regulations

15 Join the MSBA and the Bar Association of St. Mary's County for a meet & greet from 5:30pm - 8:00pm at the Front Porch in Leonardtown, Maryland. Heavy appetizers and drinks will be served. For more details and/or to register, please visit: www.msba.org/St-Mary-Meet-Greet

15 Maryland Volunteer Lawyers Service presents *Celebrate Pro Bono 2019* from 6-8:30pm at the American Visionary Art Museum. Guests will enjoy a cocktail hour with dinner and awards program to follow with keynote speaker Maryland Court of Appeals Chief Judge Mary Ellen Barbera. For more information please visit: www.mvls.org/cpb2019

22-23 The MSBA Department of Learning and Publications is excited to offer the newest presentation of *Essentials of Maryland Practice* on October 22-23, 2019 at the Conference Center at Sheppard Pratt in Towson, MD! Learn from seasoned faculty, the nuts and bolts of Maryland law practice in 16 different areas of law. This comprehensive 2 two day course will help inform new lawyers who are seeking real-world know-how, and serve as a touchstone for seasoned practitioners who trust its reliable, concise authority on various areas of law including Adoption, Guardianship & Change of Name, Real Estate Transactions, Estate Administration, Business Organizations, Traffic, Torts, Landlord/Tenant and more! For more information and/or to register, please visit: www.msba.org/Practice-Essentials

24 *Membership Mingle*: Join your local MSBA Estate & Trust section member colleagues for an evening of networking and socializing over hors d'oeuvres and drinks from 4:30pm - 7:30pm at Kona Grill at Baltimore's Inner Harbor! For more information and/or to register, please visit: www.msba.org/Membership-Mingle-10-24

25-26 MSBA's 60th Conference of Bar Presidents and 12th Young Lawyers' Summit. Local and Specialty Bar Presidents from around the State to share best practices, brainstorm new programs to better serve their members.

28 The MSBA Department of Learning and Publications is excited to offer the newest presentation *2019 Criminal Law Update*, on Monday, October 28th at the University of Baltimore in Baltimore, MD! Experienced practitioners Nancy Forster and Tara LeCompte will lead a review of new case law from the Maryland Court of Appeals, the Maryland Court of Special Appeals and the Supreme Court. A special hot topic session will address getting and using police body camera footage. If you can't attend the live program in Baltimore, it will be webcast concurrently for viewing around the state and will be available online on-demand one week after the program. 3.5 hours of credit with the surrounding MCLE states will be offered. For more information and/or to register, please visit: www.msba.org/Criminal-Update

dangerous, predatory animals and which have long records of noncompliance with the AWA.

Fortunately, in 2014, the state legislature took a significant step toward remedying these problems by enacting a law to supplement federal regulation of exhibitors. It mandates that USDA-licensed exhibitors may obtain or breed dangerous primates, bears, big cats and certain other animals only if they satisfy liability insurance, staffing, animal disposition planning, and zoonotic disease prevention requirements. In addition to imposing basic operational requirements on exhibitors, the law created substantial obstacles to abuse of the USDA licensee exception.

While this progress is heartening, the question remains: why are big cats and other exotic animals still being kept in unsafe and inhumane conditions at roadside zoos in Maryland? The answer lies, in part, with restrictions that were eliminated from the 2014 legislation prior to its enactment. Specifically, a provision limiting the operations of USDA licensees with significant AWA violations was removed. This concession enabled Maryland's most notorious captive animal exhibits to continue to obtain animals, despite ongoing, documented animal mistreatment and dangerous incidents like escapes and attacks.

One western Maryland facility, for instance, has been accumulating AWA citations for years, with well over 100 violations reflecting persistent animal care and safety failures. Other roadside zoos in the state have comparably egregious records but continue to operate under valid USDA li-

censes. Exempting these facilities from Maryland's captive animal restrictions without reference to AWA compliance has created unnecessary threats to public safety and animal welfare.

What does this mean for Marylanders? For the state's policymakers, prohibiting chronic AWA violators from keeping deadly animals would help safeguard wildlife and communities. City and county officials may implement supplemental restrictions, as is explicitly allowed under Maryland's exotic animal law. For the public, it means that, aside from keeping only domestic animals as pets, visitors can make sure to patronize only animal exhibits where the animals are held humanely. This includes checking to see if a zoo has obtained Association of Zoos and Aquariums (AZA) accreditation. As advocates work to strengthen federal law, Maryland can improve the lives of big cats and other animals by acting to keep these beautiful but dangerous animals out of unqualified hands. ●

Carson Barylak, Esq. is a Campaigns Manager at the International Fund for Animal Welfare (IFAW). She works to advance policies protecting wild animals, including animals in captivity.

Kenneth Vogel, Esq. practices business law and civil litigation in Maryland and Washington, DC. He is also the Maryland and DC state representative of Construction Dispute Resolution Services, an international provider of mediation and arbitration services.

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McMillan Metro is pleased to announce new Partners Larry Burch and Elyse Strickland, and new Associate Jennifer Manley.



Larry Burch a former Navy JAG officer and successful Maryland and DC trial attorney, who has successfully represented clients in a variety of legal matters; including, medical malpractice and auto accident cases involving wrongful death and severe disability claims, business and corporate litigation, family law and military law matters over the past 22 years. Larry has appeared on Fox News and WUSATV 9 as a commentator on military law issues. Today he practices law before the highest courts in Maryland, DC and the Court of Appeals for the Armed Forces (CAAF).



Elyse Strickland diligently serves clients throughout Maryland, Virginia, and D.C. Elyse's practice areas include family law, commercial litigation, and financial-structured settlement services. Elyse maintains a practical approach to resolving conflicts. In her time as a family law attorney, she has handled a wide variety of cases including business valuation, property distribution, alimony, child support, custody, and visitation. Elyse is trained as a family law mediator and certified as a "best interest" attorney.



Jennifer Manley has diverse experience that allowed her to find creative, effective, and practical solutions for clients. Her primary focus is family law, with experience handling a wide array of matters including divorce, child custody and visitation, child supposed, property distribution, alimony, adoption, and guardian ship. Jennifer has also represented individuals and corporations alike, and has substantial experience with personal injury law, both through settlement and litigation. Jennifer practices in Maryland.

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mitted March 5, 2017, FSA/NRCS flatly denied misleading Hood at any stage of the case: *Furthermore, there is no evidence that the Agency misinformed Appellant or engaged in any misconduct with regard to its communication with him.*

Additionally in its closing argument, FSA/NRCS claimed Hood should have been aware of regulations and restrictions on his land due to 40 years of FSA employment:

The Agency asserts that over the course of his employment he knew or should have had reason to know about what restrictions existed regarding his use, improvement or changes to his land. Whether it be through required training, his job duties or other experiences throughout his career, Appellant should have been well aware of what could be determined to be prohibited activities on his property.

On March 26, 2017, Baise offered a reply to the agency's closing argument memorandum, with close attention to NRCS' assertion that Hood's career placed him at fault:

The audacity of this argument is stunning in light of Ms. Stokes (Bennett) testimony that she met with Appellant approximately 60 times to discuss and enroll him in a USDA program.

NRCS's memorandum singles out Appellant as a FSA employee who should have known the intricate rules of what is a wetland. Appellant is a part-time employee of FSA. Being a diligent and honest person, he sought advice after purchasing T25864 ... after it had been clear cut by a professional logging firm. Appellant would not have purchased T25864 if he had known it was not farmable. He paid \$800 per acre for the clear cut timber land. As a wetland it is only worth \$500 per acre. Today the property is worth \$3,000 per

acre without such a designation..."

On June 14, 2018, Hanifin ruled decisively in Hood's favor: "Based on the facts and evidence presented, I conclude that Appellant (Hood) sufficiently demonstrated that a natural water event of water receding altered the hydrology of his land. This hydrological change proves that the wetland determinations are now no longer reliable indicators of site conditions on Appellant's land. In addition, I conclude that I need not address NAD's authority over the 2006 wetland determination, the merits of the 2006 wetland determination, the 2016 NRCS final technical determination, and that the converted wetlands are atypical because these issues are moot."

All Over Again?

Less than one month after Hanifin's ruling, NRCS sent Hood a letter cordially announcing a restart to the entire affair, signed by state conservationist John A. Bricker on July 13.

Dear Mr. Gary H. Baise and Mr. Charles Hood, Jr.: On June 14, 2018, the National Appeals Division (NAD) Administrative Judge determined that you sufficiently demonstrated that the NRCS technical determination was in error. NRCS agrees to implement the NAD decision.

We will be contacting you in the future to arrange a time to conduct the new determination.

Twelve days later, July 25, Bricker wrote again. Included in the letter:

Dear Mr. Baise and Mr. Hood: On July 13, 2018, NRCS notified you that the agency agreed to implement the June 14th NAD administrative judge decision and that we would contact you to arrange a time to conduct a new determination.

If we do not here (sic) from you by August 10, 2018, we will sched-

ule a date for a site visit and proceed to conduct the determination.

The NRCS letter is emblem-

There is no limit on how many times they can force their way onto his land to make another

never admit they were wrong. As a farmer, this has got to be the most disgusting governmental behavior I've ever seen."

Pride and Pain

Regardless of motivation, wetlands litigation dangles farmers over bankruptcy, financial ruin, and severe family stress. The ongoing emotional drain never ends, Hood describes: "As an American, I can't believe this has happened. I don't sleep knowing this entire mess will end up costing me the value of my operation. I worked for the FSA for 40 years and never once did I try to run over a farmer."

As a former federal employee, Hood's case is particularly disturbing to Quesenberry. "I took pride in my NRCS job. I can't even tell people how upsetting it is to watch this type of abuse taking place. No one is accountable?"

Hood waits and wonders, fully aware NRCS is again at the farm door. "I know it wouldn't have mattered what technique or what permission I had. They were going to do whatever they wanted. I take it for what it is: a bureaucratic vendetta."

(Again, NRCS declined comment on all FJ questions related to the Hood case.) ●

Chris Bennett is an Associate Editor (Technology and Issues) with Farm Journal, Etta, Mississippi. Mr. Bennett lives in Northeast Mississippi.

This article was originally published in the August 7, 2018 edition of Farm Journal and has been reprinted in the MSBA Bar Bulletin with the express approval of Farm Journal. The MSBA Agriculture Law Section sincerely appreciates the granting of this authorization.

I can't even tell people how upsetting it is to watch this type of abuse taking place. No one is accountable?"

atic of the entire case, Hood contends: "The top of the letter says they'll abide by the judge's decision. The bottom of the letter says they're coming to do another wetlands determination. In the end, they do whatever they want—because they can. They don't have to answer to anyone and never get voted out of office."

Quesenberry says the actions of his former employers portray a bureaucracy "out of control." The NRCS decision to proceed with another wetlands determination within weeks of the court ruling makes a mockery of the system, he asserts: "Overreach is all I see. They got proven wrong in court and it means nothing?

determination? Charles didn't threaten FSA, didn't convert a thing and doesn't have a wetland. They can lie, but they don't have their own facts straight. I want the public to know what NRCS has done so maybe, just maybe, someone can be held accountable for how they've affected Charles Hood's life."

Drake's frustration over Hood's situation boils over as he punctuates each word with emphasis: "NRCS was overwhelmed by facts. They thought they could steamroll Charles, but Mr. Baise countered them with the truth. I don't know their motivation except to say it had to be personal because they'll never,

poses and provide improvements over the art, fit into any accepted definition of "abstract."

Compounding the problem, there is a disconnect between the U.S. Patent & Trademark Office ("PTO"), which issues patents, and the Federal Circuit. As I discuss in the March 2019 MSBA Bar Bulletin, the PTO's 2019 Revised Patent Subject Matter Eligibility

Guidance requires that a claim fall into one of the following categories to be considered an abstract idea: (a) a mathematical concept; (b) a method of organizing human activity; and (c) a mental process. Neither a garage door opener nor a charge transferring device falls into any of those categories.

The net effect of the current

status quo of the U.S. patent system is that companies are encountering difficulties, sometimes insurmountable, in protecting their inventions within the United States, whereas other countries are embracing the same technologies by providing intellectual property protection. This has raised a growing concern that companies may move oper-

ations abroad in order to better monetize their innovations.

It is time for Congress to step in to restore order. In April 2019, Congress released a one-page outline of proposed goals for Section 101 reform. Although the reform has bipartisan support, it is only a first step. Much work remains to be done, and the clock is ticking. ●

David Taylor and John White are partners with the law firm of Berenato & White, LLC. The firm concentrates its practice in the area of intellectual property, including patent prosecution and client counseling.

City Council President, Brandon Scott, reported that water bills were the number one complaint his office received, even more so than crime.

Faced with mounting pressure DPW issued new regulations, effective August 12th, 2019, instituting a formal dispute process with the ability to appeal decisions to the Environmental

ants, and commercial properties, and should include reporting and public oversight. Any assistance program should be based on the customer's ability to pay and should not charge low income customers more than 3% of their monthly income, which is the threshold set by the United Nations for water affordability.

As City Council and advocates

The H2O Assist program is accepting applications at Community Action Center or by mail to DPW and will start processing those applications on September 9th.

If you want to help a low income client who is struggling with a water bill dispute, please consider volunteering for an upcoming Utility Bill Clinic on October 17, 2019, hosted by PBRC

“Faced with mounting pressure DPW issued new regulations, effective August 12th, 2019, instituting a formal dispute process with the ability to appeal decisions to the Environmental Control Board for a hearing.

Control Board for a hearing. The agency also introduced the H2O Assist program which offers a discount for low income customers. These changes are a step in the right direction for an agency that has faced lack of trust from the public for years, although advocates are still pushing for more improvements. The hearing process should be fully independent of DPW, should be accessible to homeowners, ten-

continue to push for change, water customers should be aware of their rights and the current assistance programs that exist. The dispute process regulations mentioned above are already in effect and can be accessed on DPW's website and utilized by customers who believe the new water bill they receive is incorrect. Customers should also be aware of the ability to enter into a payment plan over 6-12 months.

and MVLS. For more information and free online training email mhenn@probonomd.org or visit <https://probonomd.org/for-lawyers/training/utility/>. ●

Written by Margaret Henn, Director of the Home Preservation Project at the Pro Bono Resource Center of Maryland.

CLE Programs

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UPCOMING LIVE WEBCASTS

- **AI in the Legal Profession** - September 19, 2019 | 9:30 a.m. - 2:00 p.m.
- **What Business Lawyers and Litigation Lawyers Need to Know About Intellectual Property Law** - September 26, 2019 | Baltimore, MD | 9:00 a.m. - 4:00 p.m.
- **How to Conduct an Effective Workplace Investigation** - October 3, 2019 | 9:00 a.m. - 11:30 p.m.
- **Nuts and Bolts of Medicaid** - October 10, 2019 | 8:30 a.m. - 4:00 p.m.
- **2019 Criminal Law Update** - October 28, 2019 | 9:00 a.m. - 1:30 p.m.
- **The Maryland's New Elective Share Law: Adjustments and Opportunities** - November 4, 2019 | 9:00 a.m. - 12:30 p.m.
- **Premarital Agreements – Drafting and Negotiating from the Estates/Trusts and Family Law Perspectives** - December 3, 2019 | 8:30 a.m. - 1:30 p.m.

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