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Committees: The Heart and Soul of the Bar Association of Baltimore City

The Honorable Anthony F. Vittoria, President, Bar Association of Baltimore City



Recently, I provided an overview of the various organizations and programs of the Bar Association of Baltimore City. As part of that overview, I mentioned the 30 committees that are active during this bar year. This month I would like to take a closer look at these committees.

The vast majority of the “work” of the Bar Association occurs within, and because of, our committees. Committees provide advice and guidance to the Executive Council regarding the management or direction of the Bar Association. They develop and host interesting and timely continuing legal education seminars and panel discussions. For example, on October 27, the Professional Ethics Committee is hosting a CLE entitled *Top Ten Ethical Mistakes and How to Avoid Making Them*, which will include advice and tips from an experienced Attorney Grievance Commission defense counsel. Committees also offer well-deserved social outlets, including happy hours and other networking opportunities. Indeed, the Government and Public Interest Lawyers Committee is currently considering repeating its very popular ax throwing social event!

The Bar Association’s Committees are divided into three groups: Standing Committees, Special Committees and Substantive Law Committees. I discuss each in turn, below.

STANDING COMMITTEES — There are 14 Standing Committees in the Bar Association, as mandated by the Bylaws. Because of their status, the elimination of a Standing Committee – or the creation of a new one – can only occur by way of a formal amendment to the Bylaws.

The purpose of several of the Standing Committees is to provide guidance and advice to the Executive Council regarding the management of the Bar Association. Some examples include The Budget and Finance Committee; The Long-Range Planning Committee; and the Membership Committee. Other Standing Committees are focused on areas that are central to the core activities of the Bar Association, including the Continuing Legal Education Committee; the Communication and News Journal Committee; and the Events Committee.

There are two Standing Committees that generally garner quite a bit of interest from our members -- the Bench-Bar Committee and the Judicial Selections Committee.

The Bench-Bar Committee is intentionally comprised of judges of the circuit court, judges of the District Court, and members of the bar. A major purpose of the Committee is to maintain a dialogue between attorneys and judges in order to plan, promote, and implement the effective administration of justice in the courts. It also allows lawyers and judges a chance to interact outside of the sometimes-charged atmosphere of the courtroom.

Conversely, the Judicial Selections Committee is comprised entirely of members of the Bar – no judges allowed! This Committee does the very important work of reviewing and evaluating applicants for appointment to judicial vacancies. Following interviews with all of the applicants, the Committee votes on its evaluation of each and then submits its recommendations to the Governor of Maryland and the appropriate Nominating Commission.

It is also worth noting that a change was instituted this year to the Legislation Committee. Historically, the Legislation Committee reviewed *pending* legislation and, when appropriate, on a bill. In light of the abundance of new legislation being enacted in light

of the pandemic, such as laws relating to foreclosure and evictions, the Legislation Committee has also been asked to actively track and report on *enacted* statutes and ordinances that may be important to members and their practices.

SPECIAL COMMITTEES — Unlike the Standing Committees, Special Committees are created or kept active at the discretion of the President. Among other things, the purpose of Special Committees is to help advance the policy goals of the Bar Association or to help serve the needs of the members and the public. This year, there are ten active Special Committees, including, among others, the Diversity Committee, the Government and Public Interest Lawyers Committee, the Solo/Small Firm Practitioner Committee, and the Health and Well-Being Committee.

I am very pleased to mention the creation of a brand-new Special Committee this year – the LGBTQ Committee. The goal of this new Committee is to increase awareness of legal issues affecting the LGBTQ community, to encourage involvement in the LGBTQ community, and to facilitate discussions and strategic initiatives to advance LGBTQ rights.

Another Committee worthy of special mention is the Courting Art Committee. This Committee promotes youth artwork, connects the legal community with local communities of Baltimore City, and aims to reduce stress and anxiety for litigants and visitors by beautifying local courthouses. Each year, the Courting Art Committee, in conjunction with the Baltimore Bar Foundation, conducts an art contest open to all Baltimore City high school students. The theme for this year’s contest is “We are Baltimore” and entails the submission of a painting, drawing, or other two-dimensional work of art.

I would also like to take the opportunity to give a shout-out to the Historical Committee. This incredibly hard-working and well-organized Committee is charged with developing and maintaining the historical records of the Association, providing support for the Museum of Baltimore Legal History, and organizing the Annual Memorial Ceremony to pay tribute to members of the Baltimore Bar who passed away during the preceding year. The Historical Committee is also planning seminars on the U.S. and Maryland Constitutions; programs for Black History Month, and Women’s History month; and, fingers crossed, the hopeful resumption of the very popular tour of Green Mount Cemetery.

SUBSTANTIVE LAW COMMITTEES — Like the Special Committees, the Substantive Law Committees are created or kept active at the discretion of the President. The Substantive Law Committees provide educational and networking opportunities to members in the same practice area.

Currently there are six Substantive Law Committees: The Business Litigation Committee; The Criminal Law Committee; The Estates and Trusts Committee; The Family Law Committee; The Personal Injury Litigation Committee; and The Workers’ Compensation Committee. The Business Litigation Committee is particularly near and dear to my heart as I was the inaugural Chair of this Committee when it was created in 2013.

A complete list of all 30 Committees is available on the Bar Association’s website at www.baltimorebar.org. Included with that list is the name and e-mail for the current Chair(s) for each Committee. All members are invited to join one or more committees and I encourage you to get involved. If you are interested in, or have questions about, any of the Bar Association’s Committees, please do not hesitate to reach out to that Committee’s Chair or contact Karen Fast at kfast@baltimorebar.org.

Please Allow Us to Introduce Ourselves

Samuel Pulver, Esq., YLD Chair



In last month's President's Message in the City Bar Report, my friend and colleague Judge Anthony Vittoria, current president of the Bar Association of the Baltimore City, gave a shoutout to the Young Lawyers' Division (YLD). In this honorable mention from his Honor, he had beckoned me to provide some additional information and details about the YLD to you fine readers. According to our bylaws,

"The Young Lawyers' Division is

formed to foster the discussion and interchange of ideas relative to the duties, responsibilities and problems of the younger and/or newer members of the legal profession, to aid and promote their advancement, to encourage their interest and participation in activities of the Association, to provide opportunities for its members to meet socially, and to further the purpose of and objectives of the Association as set out in its Charter."

In layman's terms, the YLD is a group of young or new attorneys (under the age of 37 or practicing for five years or less) with a shared interest in helping each other grow personally and professionally, while advancing the interests of the BABC. To achieve this goal, we have nine standing committees that work separately and in concert to aid the YLD in realizing its purpose:

Awards Committee – The Awards Committee helps YLD members gain recognition for their work and accomplishments by nominating those members for various awards presented by the BABC, as well as other legal organizations. Through the Awards Committee, our members have received awards from the Daily Record as well as the University of Baltimore and University of Maryland. The committee also plans the Spring Social and Awards Reception where the YLD Public Service, Rising Star and Sustained Leadership Awards are presented to three young or new attorneys.

Continuing Legal Education (CLE) Committee – The CLE Committee plans and hosts legal education seminars for members of the YLD. The CLE Committee is perhaps best known for its Breakfast with the Bench program in which the YLD hosts prominent judges from the Baltimore City District and Circuit Courts, as well as the Federal District Court, for informative question and answer sessions.

Events Committee – The Events Committee plans and organizes YLD programs that fall outside of the scope of our educational, social, and public service events. Specifically, this committee has historically been responsible for planning the silent auction at the BABC Holiday Party, which raises funds for the annual Holiday

Party for Children Living in Shelters.

Membership Committee – The Membership Committee organizes and plans the YLD's happy hour and networking events. While it sounds like all fun and games, the Membership Committee works hard to book venues and secure sponsorships with the goal of hosting one event per month, often teaming up with other YLD committees or local or specialty bar associations for joint networking events.

Nominating Committee – The Nominating Committee solicits nominations for the YLD's executive committee, conducting interviews of nominees, and ultimately recommending the slate of incoming officers for the YLD for the subsequent bar year.

Policy and Planning Committee – The Policy and Planning Committee is responsible for making sure the YLD is meetings its goals and duties to its members and the BABC by maintaining and updating the YLD's Long Range Plan, reviewing proposed amendments to the Bylaws and addressing any other policy matter that may arise.

Public Education Committee – The Public Education Committee plans and executes programs that educate the public about the Constitution, the laws of the United States, the State of Maryland, the City of Baltimore, the legal system and the legal profession. Traditionally, the Public Education Committee has focused its efforts on educating the children of Baltimore City. To do this, we host an annual mock trial program where we team up with two Baltimore City schools and help coach

students to present legal arguments based on a set fact pattern. Those schools then compete against one another in front of an actual Baltimore City judge. We also participate in the annual Law Day program each Spring, where we have lawyers go out to schools to lecture to students on a specific legal topic and generally to try to spread awareness and excitement about the institution of law.

Public Relations Committee – The Public Relations Committee is the networking arm of the YLD. They manage the YLD's social media accounts and make sure that our members and our followers are informed about our upcoming events and share photographs of our various events and programs.

Public Service Committee – The Public Service Committee plans volunteer projects to help Baltimore City's most needy and vulnerable. They host food drives, volunteer at homeless shelters, conduct park cleanups, and so much more. Most notably, they host the annual Holiday Party for Children Living in Shelters, held at the Maryland Science Center, where they transport both the children and their families to the Science Center for a holiday celebration with entertainment, toys, food, and donations.

Now that you know a little bit more about us, we would love to learn about you!

Young Lawyers' Division

Volunteering During the Ongoing Pandemic

Sarah P. Belardi, Esq., Co-Chair YLD Public Service Committee

The past two years have presented many challenges to both our work and personal lives, but BABC's volunteerism continues to thrive. Following the onset of COVID-19, the Young Lawyers' Division's Public Service Committee (PSC) pivoted to hosting in-person outdoor events, as well as remote volunteer opportunities, so that members could continue to give back to our local community. The PSC cleaned up trash at Druid Hill Park, spread mulch at Cylburn Arboretum, mowed lawns and spread *even more* mulch at Duncan Street Miracle Garden, weeded at Filbert Street Community Garden, made casseroles for Our Daily Bread's Employment Center, and collaborated with Maryland Legal Aid to host a virtual training session on assisting domestic violence survivors.

The PSC also transformed the YLD's 2020 Annual Holiday Party for Children Living in Shelters from an in-person event at the Maryland Science Center to a remote event; delivering food and gifts directly to the shelters and hosting a remote party featuring a magic show, the O's Bird, and Santa. Provided that circumstances do not change, the PSC will host this year's children's party in-person on December 14, 2021. The PSC plans to minimize potential contacts by scheduling the shelters to attend in shifts, which will require extra volunteers. Please email yldpublicservice@gmail.com to sign-up as a volunteer. The children need you more than ever!

While volunteering during the pandemic takes a little more time and consideration, the rewards for volunteers and the community are endless. The new bar year coincides with many organizations re-opening their doors to volunteers and there are numerous opportunities currently available to members to give back to Baltimore City. Recently, the PSC helped sort food donations at the Maryland Food Bank and plans to assist groundskeeping crews in preparing Cylburn Arboretum's grounds for winter weather in late October (hopefully, less mulching).

The PSC plans volunteer events for BABC members on an approximately monthly basis. Please join the committee to stay informed of opportunities. PSC events are also listed in the BABC Weekly Bar Review. Outside of volunteering through the BABC, members should research opportunities convenient to their residence/office and/or relevant to their interests.

Here are some questions to consider as we navigate the ongoing pandemic:

1 – What COVID-19 protocols are in place? Frequently, the



organization's website will detail its current COVID-19 protocols. If not, the volunteer coordinator may be able to assist you in finding out more information.

2 – Is the event inside or outside? What is the ventilation like? Some opportunities can only be inside, especially as the weather cools down. That said, many indoor spaces are relatively open and well-ventilated, such as the Maryland Food Bank's donation sorting warehouse. If you prefer to serve outside, consider contacting your local park or community garden.

3 – Are there any remote opportunities available? It never hurts to ask. Get creative, consider gathering your "pandemic pod" to make casseroles for donation to an organization like Our Daily Bread's Employment Center or coordinating a collection box at your office in support of Living Classrooms' Annual Thanksgiving Food Drive.

Lastly, I want to thank all the BABC's many volunteers who donated their time and energy over the past two years, especially my fellow co-chair Kendrick McLeod.



INTERSECTIONALITY: Clashing Point of Race and Gender

Natasha M. Dartigue, Esq.

"Human crisis does not create a recognition of our common humanity." It is through this lens that the term Intersectionality came to bear thirty years ago. Transformative thinker, legal scholar, author, researcher, UCLA and Columbia law professor Kimberlé Crenshaw coined the phrase in 1989. In its original form, Professor Crenshaw defined intersectionality as the place where race, gender and class traverse or overlap in the lives of an individual. It is a legal concept that describes how social structures make certain identities the consequences or vehicles of vulnerability. To best understand where and how people exist today among the Covid-19 realities, we must understand basic terms that define what impedes equal opportunity and equal protection under the law.

Professor Crenshaw publicly explained her theory of intersectionality in the paper titled "Demarginalizing the Intersection of Race and Sex." The 30-page writing, appearing in the University of Chicago Legal Forum publication, analyzed the legal issues presented in *DeGraffenreid v. General Motors Assembly Div., Etc.*, 413 F. Supp. 142 (E.D. Mo. 1976). The issue before the court was "whether the 'last hired-first fired' lay off policies of the General Motors Corporation discriminate against the plaintiffs identified as black women, and are therefore a perpetuation of past discriminatory practices." *DeGraffenreid*, 413 F. Supp. 142 (E.D. Mo. 1976). Plaintiffs were former employees who made employment discrimination claims at their respective industrial plants. In the workplace, black jobs were available to black men, and female jobs were available to white women. However, black women were not employed in a similar manner.

Although the court agreed that relief should be granted where discrimination was shown, as proscribed in the Civil Rights Act of 1964, 42 U.S.C. § 2000a et seq. and the Civil War Civil Rights Acts, 42 U.S.C. § 1981, it would not allow the stacking or combining of statutory remedies. Specifically, the court indicated that plaintiffs should not be allowed to combine statutory remedies to create a new "super-remedy". *Id.* The court opined that their cause of action gave the plaintiffs, who were black women, relief greater than was originally intended under the statutes. Consequently, the court examined the cause of action under the separate lens of race discrimination and alternatively under the separate lens of sex discrimination. It outright refused inspection under both theories. The evidence presented through affidavits and company policies was evaluated. After an analysis of the General Motors practices, the court found that not all Blacks and alternatively not all women were excluded from employment and disallowed the claim asserting discrimination.

However, the question remained. Where do employees who are black women find relief? The court erroneously disregarded the basic truth that black women have distinct experiences as women which differ from white women and simultaneously have distinct experiences as Blacks that differ from those of black men. Black women exist in a space where the realities of race and gender overlap. Within the American social structure, it is at times a toxic place where racism and sexism thrive. Professor Crenshaw named the place "intersectionality". Doing so

she brought into the legal forefront, squarely and with particularity, the discussion of material differences in the conditions of people's lives, particularly black women. With an insight into the origin of the term "intersectionality", clarity is gleaned that Professor Crenshaw's definition is not about multiple identities.

As legal professionals, we must not fail to recognize that preexisting social differences among people have created distinct and devastating outcomes. To garner greater understanding and continue the work of identifying and dismantling discriminatory structures, I challenge you to expand your knowledge. Professor Crenshaw continues her research and scholarly work as the Co-Founder and Director of the African American Policy Forum (AAPF). The AAPF is a think tank focused on the elimination of structural inequality and provides a plethora of resources. Understanding the term intersectionality, its meaning and origin is only the beginning of the necessary work to ensure equal opportunity and equal protection under the law. We must continue to challenge existing societal frameworks of race and gender which cannot and must not be neatly compartmentalized.

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Scents and Culpability: Bloodhounds in the Courtroom

Derek M. Van de Walle, Esq.,
Co-Chair, YLD Membership Committee

On Wednesday, October 27, the Young Lawyers' Division hosted its second annual "Yappy Hour." If the name does not give it away, a "yappy hour" is a happy hour but with the added presence of dogs. Given this occasion, I thought it appropriate to highlight one dog breed's role in the legal world.

The bloodhound—or "sleuth hound"—is an ancient dog breed, with an ancestor mentioned as early as the third century.¹ The bloodhound as we know it today likely originated much later in the fifteenth or sixteenth centuries in either Britain or Belgium, but that debate is better left to canine historians.

What is certain is the bloodhound's remarkable sense of smell—at least one thousand times better than that of a human's olfaction. This acute sense of smell has been documented throughout history. As Judge Moylan observed in *Fitzgerald v. State*:

"The use of the sense of smell generally is a familiar tool of perception much older than the common law or the Bill of Rights. Indeed, *Blair v. Commonwealth*, 181 Ky. 218, 204 S.W. 67,68 (Ky.1918), stated that bloodhound evidence "was looked upon with favor as early as the twelfth century," as it related a declaration of King Richard I of England (1189–1199), "Dress yonder Marquis [who had stolen the banner of England] in what peacock robes you will, disguise his appearance, alter his complexion with drugs and washes, hide him amidst a hundred men; I will yet pawn my scepter that the hound detects him." It is hardly a new or unfamiliar investigative modality."²

"Because of this ability, bloodhounds have played a captivating, and at times shameful, role throughout history. There are legends of the bloodhound trailing William Wallace (of *Braveheart* fame). Closer to home, "[a] very colorful page of American folklore deals with the bloodhound tracking down a fugitive."³ Indeed, bloodhounds (or a close relative) were used to hunt and track enslaved persons in the Americas.⁴ Even the famous literary detective, Sherlock Holmes, relied on a bloodhound, or something close to it, named "Toby" to track a peg-legged thief. In a lesser literary detective series, Monsieur Pamplemousse's sidekick is a bloodhound aptly named "Pomme Frites" who, rather than solve mysteries, uses his keen sense of smell to sample fine French cuisine (and wine). This particular breed has made countless appearances in countless films and television shows.

Human imagination aside, bloodhounds have played a real

and vital role in the courtroom. Likely the earliest case in the United States that records the use of bloodhound evidence comes from Alabama in *Hodge v. State*.⁵ A few years later, in *State v. Tall*, that Court observed that "[i]t is a matter of common knowledge and therefore a matter of which courts will take judicial notice that bloodhounds are possessed with a high degree of intelligence and acuteness of scent, and may be trained to follow human tracks with considerable certainty and success, if put upon a recent trail."⁶ Throughout the late nineteenth and early twentieth centuries, cases from a number of jurisdictions addressed the admissibility of "bloodhound evidence"—that is, evidence of the dog's trailing abilities as it pertained to a specific suspect. The leading case at the time was *Pedigo v. Commonwealth*, in which a bloodhound trailed a scent from the scene of an arson to the defendant's boarding room.⁷ In deciding that bloodhound evidence could be admissible, the *Pedigo* Court concluded:

[I]n order to make such testimony competent, even when it is shown that the dog is of pure blood, and of a stock characterized by acuteness of scent and power of discrimination, it must also be established that the dog in question is possessed of these qualities, and has been trained or tested in their exercise in the tracking of human beings, and that these facts must appear from the testimony of some person who has personal knowledge thereof. We think it must also appear that the dog so trained and tested was laid on the trail, whether visible or not, concerning which testimony has been admitted, at a point where the circumstances tend clearly to show that the guilty party had been, or upon a track which such circumstances indicated to have been made by him.⁸

The *Pedigo* Court cautioned that:

It is well known that the exercise of a mysterious power not possessed by human beings begets in the minds of many people a superstitious awe, like that inspired by the bleeding of a corpse at the touch of the supposed murderer, and that they see in such an exhibition a direct interposition of Divine Providence in aid of human justice. The very name by which the animal is called has a direct tendency to enhance the impressiveness of the performance, and it would be dangerous in the extreme to permit the introduction of such testimony in a criminal case under conditions which did not fully justify its consideration as a circumstance tending to connect the accused with the crime. In this case there was no testimony showing that the dog had been trained or tested.⁹

In that case, because "there was no testimony showing that the dog had been trained or tested[.]" the Court concluded that the bloodhound evidence was improperly admitted. *Id.*

From *Pedigo*, other jurisdictions similarly concluded that

1. See *Claudius Aelianus*, *De Natura Animalium*.

2. 153 Md. App. 601, 686-87 (2003)

3. *Terrell v. State*, 3 Md. App. 340, 344 (1968).

4. See, generally, Parry, Tyler D. and Charlton W. Yingling, "Slave Hounds and Abolition in the Americas," 2020 *Past & Present* 246: 69-108 (Feb. 2020); see also *Fitzgerald v. State*, 153 Md. App. 601, 686 (2003) ("Bloodhounds have been chasing escaping prisoners and other fugitives through the swamps for hundreds of years, with posses following dutifully and trusting implicitly in the canine expertise . . .")

5. 98 Ala. 10 (1893)

6. 3 Ohio N.P. 125 (1896)

7. 44 S.W. 143 (Ky. 1898)

8. 44 S.W. at 145

9. 44 S.W. at 145-46.

bloodhound evidence could be admissible if additional requirements were met. Building on *Pedigo*, several jurisdictions concluded that, in order for bloodhound evidence to be admissible, there must also be corroborating evidence concerning the identity of the accused.¹⁰ Others required that the bloodhound handler was reliable,¹¹ and still others required the pedigree of the dog to be proved.¹²

Yet, some jurisdictions criticized the use of bloodhound evidence and concluded that such evidence was *per se* inadmissible. The Supreme Court of Nebraska concluded that such evidence was unreliable as a “delusion which abundant actual experience has failed to dissipate.”¹³ Similarly, the Supreme Court of Illinois, citing to *Brott*, stated that “[n]either court nor jury can have any means of knowing why the dog does this thing or another in following in one direction instead of another; that must be left to his instinct without knowing upon what it is based. The information obtainable on this subject, scientific, legal or otherwise, is not of such a character as to furnish any satisfactory basis or reason for the admission of this class of evidence.”¹⁴

Aside from the charge that the dog may be unreliable, constitutional and legal arguments against the use of bloodhound evidence have been made, including that such evidence constitutes inadmissible hearsay, that the defendant cannot confront the witness (the dog itself), and that the defendant cannot cross-examine the dog. In addressing these arguments, one New York jurisdiction observed that bloodhound tracking evidence:

Such evidence falls into the category of opinion evidence rather than hearsay. The animals are not witnesses against a defendant any more than a microscope or a spectograph. They are not subject to cross-examination any more than the animal. It is the handler who is the witness and he is merely asked to testify to what the animal actually did, not his opinion as to guilty or innocence of a person. A person is no more placed in jeopardy by the action of an animal than he is by a breath analyzer or a blood test.¹⁵

Maryland courts have approved the admissibility of bloodhound evidence when certain conditions are met. The original dog-tracking case in Maryland did not involve a bloodhound, but a German Shepherd. In *Terrell v. State*, a German Shepherd named “Rocky” tracked the defendant from the scene of a robbery to his parked vehicle. This evidence, testified to by Rocky’s handler, was admitted at trial.¹⁶ Addressing this issue on appeal, the Court of Special Appeals followed the “majority” view admitting bloodhound evidence. Citing to *Hodge and*

Pedigo with approval, the Court laid out the test for the admissibility of dog-tracking evidence:

“...First a proper foundation must be laid. Before any evidence pertaining to the results of the dog’s tracking is admitted, the handler of the dog must testify as to his own qualifications and experience and that of the dog, along with an account of the dog’s ability to track. The cases have talked in terms of the dog’s experience, reliability, reputation, skill and training. Next, the circumstances pertaining to the trailing itself must be shown. For example, was the trail fresh or had it been trampled, or was there interference with the dogs while they were tracking, or were the dogs placed on the trail soon enough. According to *Pedigo*, the dogs must be placed on the trail at such a point where it is known that the perpetrator of the crime had been. The Kentucky Supreme Court in *Pedigo* made it clear that any evidence derived from the use of the dogs will be ‘one of the circumstances which may tend to connect the defendant with the crime * * *’. Furthermore, the actions of the dogs must be certain especially in indicating whom they were trailing...”¹⁷

Further, the *Terrell* Court expressly rejected the “pedigree” requirement.¹⁸ As long as these foundational requirements were met, “the evidence may be used to identify the accused as the perpetrator or for some other reason, as long as this evidence is corroborated.”¹⁹

In *Briscoe v. State*, a bloodhound named “Lady” was given a scent from a sweater disposed of by the culprit at the scene of a rape.²⁰ Lady trailed the scent three-tenths of a mile from the scene to a shopping center, from which, using other evidence, eventually led to Brisco. The bloodhound evidence was used at trial as well as in an application for a search warrant of Brisco’s home.²¹ A search was conducted, and ultimately, Brisco was brought to trial and convicted. On appeal, Brisco argued that the use of the bloodhound to detect the trail of a perpetrator of a crime is equivalent to the use of an informer, and that the use of the affidavit is totally defective for the reason that it fails to specify the facts upon which the affiant concluded that the information from the dog was reliable.²²

The Court of Appeals rejected Briscoe’s argument that “the same strict standards which apply to unnamed police informants also apply to police tracking dogs.” *Id.* at 127. Then, the Court upheld the admission of Lady’s handler’s testimony as to Lady’s “foray” from the scene to the parking lot, concluding that the *Terrell* requirements had been met and so a successful foundation had been laid. The court observed that Lady’s handler had over seven years’ experience with bloodhounds, had trained Lady himself for three years, including monthly retraining, and that Lady and her handler had had three or four successful finds.²³

10. See *Davis v. State*, 47 Fl. 26 (1904); *State v. Rasco*, 238 Mo. 535 (1911); *Parker v. State*, 46 Tex. Crim. 461 (1904).

11. See *State v. Moore*, 129 N.C. 494 (1901).

12. See *State v. Hunter*, 143 N.C. 607 (1907); *State v. Dickerson*, 77 Ohio 34 (1907).

13. *Brott v. State*, 97 N.W. 593, 594 (Neb. 1903).

14. *People v. Pfanschmidt*, 104 N.E. 804, 823 (Ill. 1914).

15. *People v. Centolella*, 305 N.Y.S.2d 279, 282 (N.Y. Co.Ct. 1969).

16. 3 Md. App. 340. 343-44 (1968).

17. *Id.* at 350-52 (footnotes and some citations omitted).

18. *Id.* at 353 (“This court does not believe that a showing of a certificate of pedigree would enhance the evidence adduced by the actions of the dog in question.”).

19. *Id.* at 353.

20. 40 Md.App. 120, cert. denied, 283 Md. 730 (1978).

21. *Id.* at 123-26.

22. *Id.* at 127.

23. *Id.* at 133.

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In *Roberts v. State*, a bloodhound named “Sniffer” tracked a scent from a cap worn by a rapist to tire tracks on the side of the road.²⁴ Witnesses were able to identify the vehicle, which led police to Roberts’s mother’s home where Roberts had parked the vehicle. When questioned, Roberts admitted to parking his vehicle on the side of the road, but only to “relieve” himself. The police then took Roberts to the victim’s house for a show up identification.²⁵

Roberts was subjected to what he referred to as a “dog line-up” at the victim’s home. Roberts stood in a line of four police officers, side by side, three to five feet apart. The cap from which Sniffer originally obtained the scent was dropped on the ground 25 to 30 yards from the line up. Sniffer was again given the scent from the cap, given the command, and trailed the scent to Roberts, circled around him and then sat at Roberts’s feet. Sniffer was taken away, the members of the line up were moved, and the process repeated. Sniffer again trailed the scent to Roberts.²⁶ This evidence was admitted at trial, where the judge concluded that the *Terrell* requirements had been met.²⁷ Roberts appealed his conviction on the grounds of the “dog line-up” was inadmissible because it was impermissibly suggestive since Sniffer was familiar with the other members of the line-up.²⁸

24. 298 Md. 261, 266 (1983)

25. *Id.* at 267.

26. *Id.* at 267.

27. *Id.* at 269.

28. *Id.* at 268.



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The Court of Special Appeals affirmed, and the Court of Appeals granted certiorari.

The Court of Appeals also affirmed, concluding that “[t]he trial court did not err in failing to rule that the composition of the line-up was prejudicial because the only person in it with whom Sniffer did not have some familiarity was Roberts.”²⁹ The Court noted the extensive training and experience of Sniffer. Sniffer had been trained in accordance with the manual adopted in 1978 by the National Police Bloodhound Association. That training consisted of Sniffer following trails of the handler’s neighbors; over time, the trails were made longer, the scents older and more complicated as the training progressed. In his practice trailing, Sniffer had a ninety-nine percent success rate. In fact, only once in practice had Sniffer been distracted while on the trail, which “occurred when the neighbor’s wife had crossed the trail carrying a platter of fried chicken.” Further, Sniffer had an eighty-five percent success rate in actual cases. The longest trail that Sniffer had successfully followed was over 6.5 miles, and the oldest trail was between eight and ten hours.³⁰

29. *Id.* at 274-75.

30. *Id.* at 270-71.



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In *Clark v. State*, the Court of Special Appeals recognized the use of “cadaver dogs” which are “trained to recognize the scents of blood, tissue, and decomposition of humans.”³¹ More recently, that same Court, in an unreported opinion, noted the use of a bloodhound named “Allie” to trail the defendant to his apartment building by means of a shoe that the defendant had left at the scene of an assault.³²

The use of bloodhounds in criminal investigations occasionally makes the national news. Bloodhounds were used for the D.C. Sniper investigation as well as for the investigation into the 2001 anthrax attack.³³ More recently, bloodhounds were used to search for Brian Laundrie through the Florida swamps.³⁴

31. 140 Md. App. 540, 553 (2001).

32. *Nicholson v. State*, 2019 WL 328431 at *1 (Jan. 24 2019).

33. See “FBI’s use of bloodhounds in anthrax probe disputed,” Scott Shane, *Baltimore Sun*, (Oct. 29 2002).

34. See Haley Yamada, “Gabby Petito case: Timeline of travel blogger’s disappearance,” ABC News (October 12, 2021) (available at: <https://abcnews.go.com/US/gabby-petito-case-timeline-travel-bloggers-disappearance/story?id=80126596>).

It should be noted, however, that the use of bloodhound evidence is not without error. For example, in 2001, a jury awarded \$1.7 million to a man who had been wrongfully convicted of rape—a conviction based, in part, on the use of bloodhound evidence.³⁵

Even as tracking technologies advance by way of human-created device, bloodhound evidence continues to be a valuable technique. This is due, no doubt, to the continued success and reliability of the bloodhound’s nose. But even this once “mysterious power” has become a scientifically proven and studied trait. Whether it is trailing a suspect from the scene of a robbery down roads, parking lots, and alleyways, so simply being distracted by a platter of fried chicken, the bloodhound’s nose is truly remarkable.

35. See “FBI’s use of bloodhounds in anthrax probe disputed,” Scott Shane, *Baltimore Sun*, (Oct. 29 2002).

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THE DAILY RECORD

Cooperation versus Self-Incrimination: Asserting the Fifth Amendment in Attorney Discipline Cases

George S. Mahaffey, Jr., Esq.

Responding to an attorney-discipline investigation in Maryland often involves balancing the requirement to cooperate with Bar Counsel, versus the need to prepare a vigorous defense. The equation is made more nettlesome when the right against self-incrimination is invoked, primarily because of confusion concerning the Fifth Amendment's impact on attorney-discipline cases.

The Supreme Court has held that the Fifth Amendment "not only protects the individual against being involuntarily called as a witness against himself in a criminal prosecution but also privileges him or her not to answer official questions put to him or her in any other proceeding, civil or criminal, formal or informal, where the answers might incriminate him in future criminal proceedings."¹ As part of these protections, the Supreme Court has held that an attorney may not be disciplined for invoking the Fifth Amendment privilege against self-incrimination in an attorney disciplinary proceeding.²

In *Spevack v. Klein*, the Supreme Court considered a disbarment proceeding against an attorney who refused to honor a subpoena, produce documents, and testify because to do so would potentially incriminate him. The attorney-respondent in *Spevack* invoked the Fifth Amendment and the trial court ordered disbarment because it found the Fifth Amendment was not applicable to him because he was an attorney.

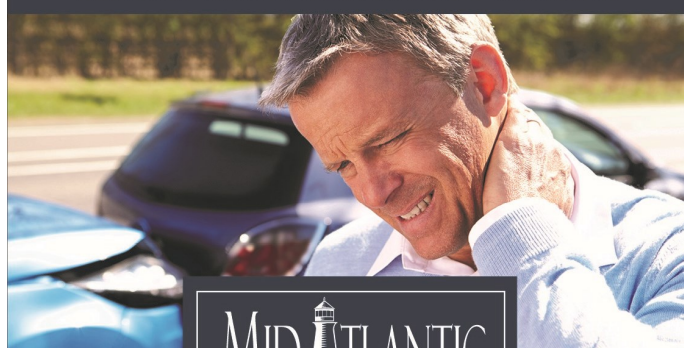
The Supreme Court reversed and found that under the Fifth Amendment, an attorney who invokes the Fifth Amendment can suffer "no penalty," meaning "the imposition of any sanction which makes the assertion of the Fifth Amendment privilege costly."³ The Court found that the Fifth Amendment is to be construed broadly and that the "privilege has consistently been accorded a liberal construction."⁴ Importantly, attorneys are "not excepted" from the protections of the Fifth Amendment because the "threat of disbarment and the loss of professional standing, professional reputation, and of livelihood are powerful forms of compulsion to make a lawyer relinquish the privilege."⁵

The Court of Appeals in Maryland has long-recognized

that attorney disciplinary matters require basic due process protections,⁶ including the Fifth Amendment.⁷ While there is not a significant body of case law analyzing the Fifth Amendment in the context of ethics cases, the Maryland Court of appeals has held that the Fifth Amendment applies in attorney discipline cases.⁸ Indeed, the Court of Appeals has cited *Spevack* with approval for the proposition that as for inquiries from bar counsel, "the attorney's duty to respond is qualified by the privilege against self-incrimination."⁹ Given the approach taken by the Court

6. See *AGC v. Roberson*, 373 Md. 328, 345, 818 A.2d 1059, 1069 (2003).
7. *AGC v. Unnamed Attorney*, 298 Md. 36, 43, 467 A.2d 517, 520 (1983).
8. See *AGC v. Marcalus*, 414 Md. 501, 996 A.2d 350 n. 10 (2010) (quoting *Spevack* when discussing a sanction for the respondent-attorney).
9. *AGC v. Fezell*, 361 Md. 234, 249, 760 A.2d 1108, 1116 n.6 (2000) (citing *Spevack*). See also Judge Raker's dissent in *AGC v. Bridges*, 360 Md. 489, 518, 759 A.2d 233, 248 (2000), where she stated that "with the exception of the privilege against self-incrimination...an attorney is required to cooperate with bar counsel in discipline matters."

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1. *Lefkowitz v. Turley*, 414 U.S. 70, 77 (1973).
2. See *Spevack v. Klein*, 385 U.S. 511 (1967).
3. *Id.* at 515 (emphasis added).
4. *Id.* at 516.
5. *Id.*

of Appeals and the Attorney-Grievance Commission, practitioners should be mindful of two things when invoking the Fifth Amendment in attorney discipline cases.

First, anticipate that bar counsel may allege that an assertion of the Fifth Amendment is somehow a failure to cooperate with its investigation which amounts to a violation of Maryland Rule 19-308.1. While this is unlikely, it is important to make clear that any assertion of the Fifth Amendment is consistent with one's cooperation with bar counsel's investigation.

Second, anticipate that bar counsel will likely try to penalize the assertion of the Fifth Amendment, likely via an evidentiary ruling by the trial court prior to trial. When faced with an argument that any such ruling would likely run afoul of *Spevack* and Maryland case law, bar counsel will likely argue that no penalty has yet occurred since no sanction has yet been entered by the Court of Appeals. But that should not matter given that *Spevack* holds

the imposition of "any sanction which makes the assertion of the Fifth Amendment privilege 'costly,'" ¹⁰ is improper, and that the "threat of disbarment" ¹¹ is sufficient to constitute such a sanction. Accordingly, it should not matter that a respondent-attorney was not immediately disbarred or otherwise disciplined; rather, what matters is that the respondent-attorney invoked the Fifth Amendment and was penalized in some fashion for doing so.

The bottom line is, the Fifth Amendment applies in attorney-discipline cases and respondent-attorneys have a right to assert it just like any other party in a case. Accordingly, the trial and appellate courts should be wary of allowing bar counsel to penalize attorneys for asserting their Constitutional rights, even though the scope of the protections afforded by the Fifth Amendment may potentially be impacted by the specifics of the case.

10. See *Spevack*, 385 U.S. at 515.

11. *Id.* at 516.

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NOTICE OF APPOINTMENT OF NOMINATING COMMITTEE

In accordance with the Bylaws of the Bar Association of Baltimore City, you are hereby notified of the appointment of the Association's Nominating Committee comprised of Darren Kadish, Chair, Aaron DeGraffenreidt, Letam Duson, Lauren Lake, James Robinson, Alicia L. Wilson, and Michelle K. Wilson. The Committee will meet in late January or early February to interview and nominate candidates for the offices of President-Elect, Vice President, Treasurer, Secretary, and three Elected Members to the Executive Council who are not young lawyers and our Association's Delegate to the American Bar Association.

The Committee will also nominate three representatives to serve a two-year term on the Maryland State Bar Association Board of Governors for the First District (Baltimore City).

Members interested in any of these positions should submit a letter and resume to Darren Kadish, Chair, Nominating Committee, The Bar Association of Baltimore City, 111 N. Calvert Street, Suite 627, Baltimore, MD 21202, or submit electronically to kfastebaltimorebar.org. **Resumes must be received no later than 4:30 p.m. on Saturday, January 15, 2022.**

Teresa Epps Cummings

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TO: MEMBERS OF THE YOUNG LAWYERS' DIVISION
FROM: LAUREN LAKE, CHAIR, NOMINATING COMMITTEE
RE: APPOINTMENT OF NOMINATING COMMITTEE

The Nominating Committee of the Young Lawyers' Division (Lauren Lake, Chair, Sarah Belardi, Letam Duson, Kate McComiskey, Divya Potdar, Alison Schurick, and Kerri Smith) is soliciting applications for the following YLD positions for the 2022-23 Bar year:

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Applications may be made by anyone who is a young lawyer and a member of the BABC. Any member of the BABC may recommend the name of any Division member for consideration by the Nominating Committee.

If you are interested in being considered for any of the above positions, please write to Lauren Lake, Chair, YLD Nominating Committee, c/o Bar Association of Baltimore City, 111 N. Calvert Street, Suite 627, Baltimore, MD 21202, or email to info@baltimorebar.org. **Your letter and resume must be received by 4:30 p.m. on Monday, January 31, 2022.** All applicants or recommended persons must be available for an interview by the Nominating Committee on February 2.

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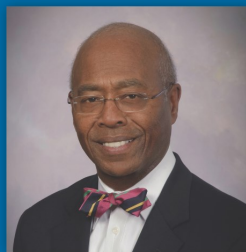
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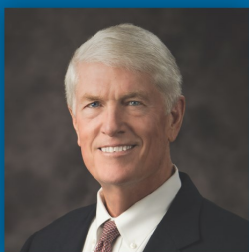
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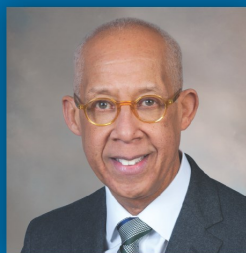
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BABC Executive Council Orientation Meeting

July 29, 2021

The Executive Council met and enjoyed some fun and games before planning a full year for BABC members.



YLD Council Orientation Meeting

August 24, 2021

The BABC's Young Lawyers' Division had their first in-person orientation meeting of the bar year at La Calle with a fun ice breaker. The YLD Committee Chairs have planned some exciting events for the upcoming bar year. Good luck to our current YLD Chair, Sam Pulver and to all the 2021-2022 council members!



End of Summer Members' Reception

August 30, 2021

Thank you to everyone who came out to the End of Summer Members' Reception at the Ritz Carlton Residences.

Thank you, Rachel Samakow for securing the location.

A special thank you to The Bar Insurance Trust and Duckpin for sponsoring tonight's reception.



YLD Welcome Back Happy Hour

September 23, 2021

The BABC's Young Lawyers' Division had their first Happy Hour of the Year to welcome back BABC members and law students after a long break from live events. Thank you to our sponsors: Grand Therapeutic Services, Let's Go Fitness, and Thomson Reuters.



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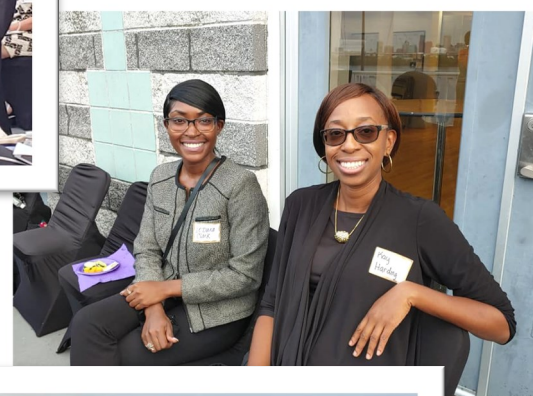
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Senior Legal Service's Seventh Annual Cabaret & Cabernet

October 7, 2021

Senior Legal Services provided a lovely night of entertainment. It was a great opportunity to watch BABC members showcasing their talents while raising money to assist the elderly. The Baltimore Rowing Club provided excellent views of the city, and a delightful evening sky.



BABC Crab Feast at Bo Brooks

October 20, 2021

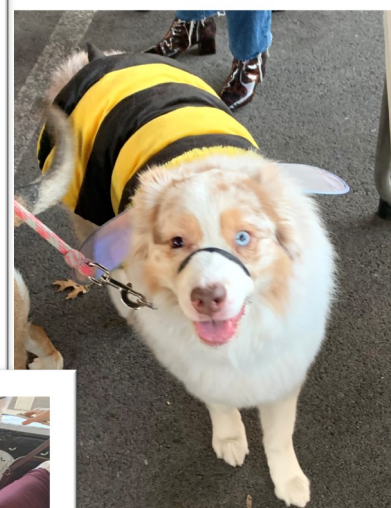
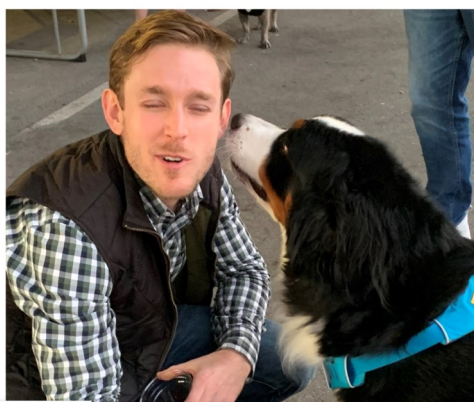
Crabs, crabs, and more crabs. One of the largest gatherings so far this year, BABC members came out to pick some crabs and have a few laughs. Thank you, Duckpin for sponsoring and letting us keep the price down for our members!



BABC YLD Yappy Hour

October 27, 2021

Happy Hour? No, Yappy Hour! BABC members came out with their dogs in costume. No tricks just a treat for all!



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