

April 2022

Paradigm

President's Podium:

A new look

Fragile state

**A safe haven
for refugees**

**Growth industry
for cannabis lawyers**

P PRIMERUS

The World's Finest Law Firms

The Primerus Paradigm

April 2022



About Our Cover

The world, in a symbolic sense, has taken on a different glow in 2022, due in large part to raging fires on the military and political fronts that are testing the resolve of free societies around the globe.



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A new look reinforces the mission of Primerus

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Fragile state

Democracy, a cornerstone of the free world, now under siege from combination of forces

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Every lawyer in Primerus shares a commitment to a set of common values known as the Six Pillars:

- Integrity
- Excellent Work Product
- Reasonable Fees
- Continuing Legal Education
- Civility
- Community Service

For a full description of these values, please visit primerus.com.

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President's Podium

John C. Buchanan



A new look reinforces the mission of Primerus

As you undoubtedly noticed, there is a different kind of cover framing this issue of the Paradigm magazine.

It is a break from the past and serves as the launch pad for a revamped magazine that is designed to inform, educate, and inspire at every turn.

The change in look and tone comes at a time when the world – and its most fundamental and enduring institutions – are in the crosshairs of uncertainty, threatening our way of life and the values we hold dear.

Of course, one such threat came unexpectedly in the form of a fast-spreading virus called “COVID-19,” which in the span of the past 28 months has cast a deadly cloud around the globe, claiming the lives of approximately 6 million people, including nearly a million in the United States alone.

The ongoing pandemic, aside from the tragic loss of life, also has shaken our political, economic, and health care systems to the core, prompting unforeseen changes for the mere sake of survival.

And survive – for the most part – we have, thanks principally to our overall resilience and innermost ingenuity as we unleashed the twin forces of modern medical science and the marvels of advanced technology to return to a sense of normalcy.

Yet, other threats remain, endangering the very existence of the freedoms, rights, and liberties that we enjoy.

Most alarmingly, the Russian invasion of neighboring Ukraine in late February should be

viewed in the historical context of yet another authoritarian power grab designed to test the resolve of pro-democracy leaders around the world. Time will tell, of course, whether an array of stiff economic sanctions will curb Russia's long-term appetite for the cost of war or instead will require a measured military response to stem the tide of tyranny.

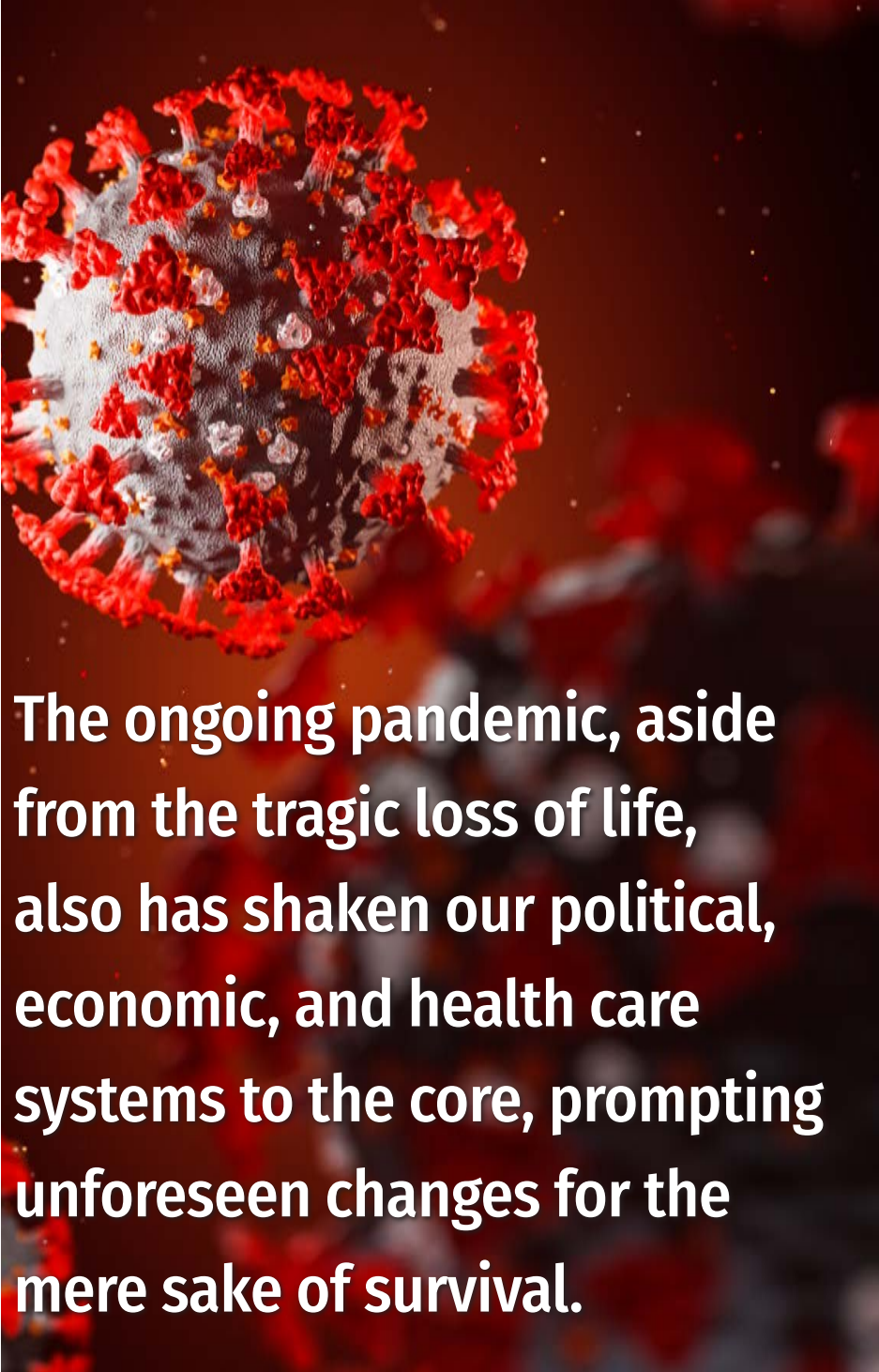
History has not been kind when judging the actions of dictators bent on imposing their will on other nations, particularly those countries that cherish freedom and the rule of law. The list of authoritarian leaders who have lived and died by the sword is as long as their follies and failures, giving further credence to the time-honored saying that "no matter how high the throne, there sits but an ass."

While external forces – whether in the form of an invading army, a cyber-attack, or a terrorist action – would seemingly pose the most alarming threats to the free world, the events of January 6, 2021 at the U.S. Capitol offer compelling evidence that democracies are now fighting a two-front war.

And that internal battle is being waged with bullying and truth-bending as weapons, further dampening the prospects of uniting a country that for years has been fractured by partisan politics.

But despite that gloomy backdrop, there are more than a few rays of hope that we can still witness a "New Birth of Freedom," which served as an inaugural theme in 2009 to commemorate the 200th anniversary of the birth of Abraham Lincoln.

The theme, of course, was built around a phrase from Lincoln's Gettysburg Address in 1863, and expressed ideals about renewal, continuity, and national unity. It stressed the need for "shared sacrifice" and a "new



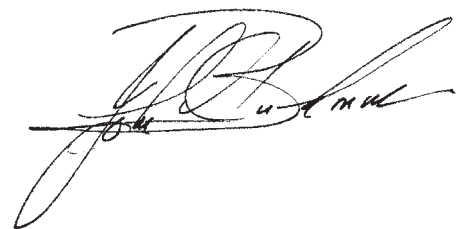
The ongoing pandemic, aside from the tragic loss of life, also has shaken our political, economic, and health care systems to the core, prompting unforeseen changes for the mere sake of survival.

sense of responsibility to answer" a nation's challenges at home and abroad.

It also underscored the importance of the rule of law, looking to those in the legal profession to take the lead in ensuring its future in a free and civilized society.

Since the founding of Primerus in 1992, we have promised to do just that, working tirelessly to promote the most important ideals of the profession while building an alliance that is international in scope – and understanding.

It's also clear now – in light of recent events – that our work to preserve and protect is in reality just beginning, offering us a grand opportunity to be an important source of strength in shaping the world's political future.





Fragile state

**Democracy, a
cornerstone of
the free world,
now under siege
from combination
of forces**

By Tom Kirvan

S

outh Carolina attorney Joel Collins is worried.

In fact, he's deeply troubled by the razor-sharp edge to today's body politic.

As is another southern gentleman of note – Jimmy Carter.

The 39th president of the United States is among those who fear that the future of democracy is engulfed in a raging five-alarm fire, threatening the very foundation of who we are as a civilized society.

The former Commander in Chief, who defied pollsters by winning the presidency in the 1976 election, sounded his own alarm bells in a recent op-ed piece in *The New York Times*, proclaiming, "I now fear that what we have fought so hard to achieve globally – the right to free, fair elections, unhindered by strongman politicians who seek nothing more than to grow their own power – has become dangerously fragile at home."

Those sentiments come from a man not known for hyperbole, a 97-year-old political icon who served his country faithfully as a Navy officer, Georgia governor, and for four years as president.

And yet, those concerned about the staying power of democracy realize that the threat extends far beyond America's borders and has become a global phenomenon, fueled by a new form of populism based largely on an anti-immigration fervor and a corresponding effort to weaken independent and democratic (small "d") institutions.

For Joel Collins, an expert on constitutional government and its origins (see related story), the stakes are sky-high.

"If we lose our democracy, we will lose our right to hold our elected leaders accountable, our precious right to be

heard, and our ability to achieve change on virtually every other issue we care about," said Collins, one of the co-founders of the Collins & Lacy law firm in South Carolina. "As we approach the year ahead, we must do so clear-eyed about the challenges we face. Quite succinctly, in 2022, democracy – not just candidates – will be on the ballot."

Collins, a longtime member of Primerus, said a look back in history can help put the current problem in the proper perspective.

Way back. To the time of the Magna Carta, more than eight centuries ago in June of 1215.

Labeled by former British Prime Minister David Cameron as "Britain's greatest export," the Magna Carta is the "bedrock of the concepts of freedom, justice, due process of law, the rule of law, and trial by jury," according to Collins.

"It is the cornerstone of the unwritten British Constitution," Collins wrote in a class supplement for a course he teaches at the University of South Carolina Honors College. "Magna Carta became the foundation of constitutions of various countries around the world, especially the first written national constitution in the world, the Constitution of the United States of America written in 1787."

That Constitution, said Collins, was the product of intense negotiations and compromise, and represents – like the Magna Carta – an "unprecedented declaration of human rights." Those rights and liberties were "hammered out" by the Founding Fathers, the group of 18th century American independence leaders who built the frame of government for the new country. They, according to Collins, were men of "virtue," a quality currently in short supply in today's political landscape.

"Every problem we face, and there are many, can be addressed through education, specifically by focusing our attention on teaching the importance of virtues," said Collins.

"The coarsening of our current political discourse is proof that our current elected

leaders fall short of the Founders in several ways. They lack civility, one of the Six Pillars of Primerus," he noted. "Understanding they were risking everything, including their lives, the Founding Fathers voted for and later signed the Declaration of Independence. It ended with the signers pledging to each other 'our lives, our fortunes and our sacred honor.'

"I dare say no current political leader refers to his honor as being sacred. This further demonstrates their relative lack of virtue. And it was virtue that the Founders agreed was vital."

Political rancor, of course, is part of the fabric of any society, but the combustible nature of social media platforms combined with the incessant drumbeat of right-wing and left-leaning media outlets are stoking the flames of conflict, analysts believe.

Frank Wu, a noted author and political commentator who now serves as president of Queens College in New York, frames the underlying issue in the most fundamental of terms. "Democracy is a process, not an outcome," said Wu, the former dean of Wayne State



Frank Wu

University Law School in Detroit. "It requires participation and active engagement. We talk about that as a right; it's also a responsibility. Our unique experiment in self-governance is not only a democracy; it is a diverse one.

"The divisions we face now are about much more than what direction we should go in as a nation, whether on issues such as the pandemic or climate change or the economy or law enforcement," Wu claimed.

“The divisions are so deep that we do not share a basic understanding about the facts of the world around us. The greatest difficulty will be coming back together on at least a few facts.”

Nathan Bomey, a business reporter for *Axios* and an acclaimed author of three books, began exploring the issues surrounding the political divide in 2018 in a book titled, “After the Fact: The Erosion of Truth and the Inevitable Rise of Donald Trump.”

A confluence of political events surrounding the 2016 presidential race between Trump and Hillary Clinton, according to Bomey, “created the perfect seedbed for spin, distortion, deception,

Labeled by former British Prime Minister David Cameron as “Britain’s greatest export,” the Magna Carta is the “bedrock of the concepts of freedom, justice, due process of law, the rule of law, and trial by jury,” according to Collins.

political narratives that favor ideology over science. And in our schools, we fail to teach students how to authenticate information.”

Yet, all is not grim, said Bomey, a view that he bolstered in his most recent book, “*Bridge Builders: Bringing People Together in a Polarized Age*.”

“I started working on ‘*Bridge Builders*’ in late 2018 by going out and meeting people who aren’t accepting the status quo of toxic polarization,” said Bomey.

“I walked away from the experience of my second book disillusioned about the future of democracy in this country,” Bomey admitted. “It was clear that there was a need to work together for the good of the nation, and I was determined to be part of the solution in that regard.”

With that goal in mind, Bomey set out to build a case for writing a book offering a “positive path” for an otherwise bleak political situation.

“Before pitching the book idea to publishers, I knew that I had to do a lot of work up front to convince them that there were signs of hope amidst all the doom and gloom,” said Bomey, who is the son of a minister. “I wanted to avoid people in the public square and instead concentrate on those outside the spotlight or under the radar who were working hard to make a difference.”


He began his journey in Charlottesville, Va., the scene of the “Unite the Right” rally in 2017 that resulted in one death and more than 30 injuries when white supremacist groups clashed with counter-protesters.

“Charlottesville offered a perfect example of a seemingly progressive community racked by extremism and hate,” said Bomey, who initially ran into a general reluctance to be involved in the story he was trying to cover. “I began by cold-calling some ministers who pointed me to others instead.”

From the beginning, Bomey was intent on telling the story of “someone who was using social media to bring people together,” given how much the opposite occurs on those platforms.

Eventually, Bomey was led to those working with “The Everyday Projects,” a grassroots movement that “uses photography to challenge stereotypes that distort our understanding of the world,” according to its website. The group bills itself as a “global community of visual storytellers... all committed to using imagery to combat harmful misperceptions and to rise above persistent inequality.”

For Bomey, the organization’s “shared sense of humanity” spurred his search for other like-minded groups and individuals that ultimately surfaced over a six-month period.

“We, as a dysfunctional family of a nation, will continue down a path toward a state of irreconcilable differences that threatens to hobble our democracy, our economy, and our personal well-being unless we fight back against the forces that perpetually seek to divide us,” said Bomey. 



Nathan Bomey

and bald-faced lies,” due in large measure to “shifting news habits, the rise of social media, the spread of entrenched

ideologies, and the failure of schools to teach basic critical-thinking skills.”

In writing the book, Bomey interviewed “a unique mix of executives in the technology world, while also talking with experts in the fields of psychology, sociology, political science, and the media.” His examination presented a less than flattering picture of modern-day society.

“On Facebook, we present images of our lives that ignore the truth and intentionally deceive our friends and family,” he said. “We consume fake news stories online and carelessly circulate false rumors. In politics, we vote for leaders who leverage

The Constitution serves as his guide to 'our way of life'

By Tom Kirvan



Joel Collins

He's a man who loves the United States Constitution – that document of 1789 which has been amended 27 times and has been brandished by left and right to justify their hold on the shifting political sands of the day.

Joel Collins, now in the 54th year of a distinguished legal career, no longer does the heavy lifting at the Columbia, South Carolina law firm that he co-founded, Collins & Lacy. The days of seven-hour depositions are nowhere to be found on his legal calendar, a fact that he is particularly grateful for after spending the bulk of his career in the high-stakes world of professional liability law, white-collar criminal defense work, and complex civil litigation.

Now, he relishes another important duty – teaching undergraduate students at the University of South Carolina's top-ranked Honors College all about the makings and the scope of the U.S. Constitution.

Many of the students who enroll in his class enter at a serious disadvantage when it comes to basic legal knowledge, he says.

"They all know who the three judges are on 'American Idol' or other shows of that type, but hardly any of them can name even one of the justices on the nine-member Supreme Court," Collins laments. "That in itself is a real indictment of our educational system and the need for us to make an understanding of basic civics a priority."

According to Collins, there is a federal statute that requires schools to "teach the U.S. Constitution" as a way to promote a greater understanding and appreciation for the document that is at the heart of the American system of government.

"Plenty of schools don't comply with the law for reasons spoken and unspoken, but that doesn't excuse them from failing to educate students about a document that is critical to our way of life," Collins indicates. "We need to re-double our efforts to teach the Constitution."

The Constitution and our Capitol, of course, have been in the news a bit lately, for all the wrong reasons, thanks to an event that happened January 6, 2021. By any political account, that date will live in infamy no matter how you digest your news each day.

For a refreshing change, Collins suggests that we turn back the clock more than two centuries to draw inspiration from

the man who first guided the nation.

That president, of course, was George Washington, the so-called "Father of Our Country," whom Collins ranks as the finest president this country has had to offer. Collins proclaims as much in "The Legal Bench" podcast interview posted on his firm's website.

"He set a great precedent of being a president of class, restraint, excellent judgment, and tolerance for the opinion of others . . ." says Collins of Washington, who served two terms in office and "in affairs of government . . . tried to be above reproach."

Such qualities, by any standard of political measure, need to make a comeback for the sake of society, says Collins.

The opportunity for a corresponding sea change is rooted in the Constitution, says Collins, who still marvels at the elasticity and durability of the age-old document.

Collins, who has a well-deserved reputation as one of the top trial lawyers in the nation, knows good writing. He recently took his turn at it by writing an autobiography, a book that sports a tongue-in-cheek title of "The First 50 Years Are the Toughest."

"As the title suggests, I've got some miles on me," Collins says in poking fun at himself.

It's a book that offers a retrospective on his 50-plus-year career, highlighting wins and losses, while also featuring friends made and timeless lessons learned. Last year, as a belated holiday gift, Collins gave each member of his firm an autographed copy, and has done the same for his children, grandchildren, neighbors, and an ever-growing circle of friends.

It comes with a caveat, however, he says with a wink.

"As I said in my intro, it's one of those books that once you put it down, you probably can't pick it back up."

Unlike his beloved Constitution. [P](#)



Death knell of democracy?

***What lawyers can do
to meet challenges facing
free societies***

By Tom Kirvan

The shopworn phrase “death by a thousand cuts” has gained new meaning in the wake of continued

political upheaval endangering the future of democracies around the globe.

For evidence, look no further than your local bookstore, where current offerings include such titles as “How Democracies Die,” “Twilight of Democracy: The Seductive Lure of Authoritarianism,” and the chilling “The Death of Democracy: Hitler’s Rise to Power and the Downfall of the Weimar Republic.”

The lessons to be learned from the collapse of the Weimar Republic – the German state from 1918-33 that functioned as a federal constitutional republic – are perhaps the most important for those looking to history for answers to the root causes of today’s political divide.

“The Death of Democracy” treatise, written by historian Benjamin Carter Hett, offers a jarring 304-page account of how a “fringe politician” can shade the truth to such a degree that his – or her – followers lose sight of established democratic norms.

Sound familiar?

The parallels between the Nazi tyrant of World War II and the power-grabbers of today are striking, according to Hett, a lawyer who also holds a Ph.D. in history from Harvard University. Each of them, he said, rose to power through a combination of forces spurred in large part by anti-immigration sentiments and economic uncertainty that were perceived as threats to the standard way of life.

Opposition to immigration, according to Hett, has been a familiar refrain for authoritarian regimes, and its sound has become even more deafening thanks to right-wing television and radio outlets that stoke fears on a 24/7 news cycle.

Hett, a history professor at Hunter College in New York, dedicates his book “to everyone who fights for freedom, human rights, democracy, peace, and tolerance,”

noting in the acknowledgments that, “Given the theme of this book and the times we live in, the dedication speaks for itself.”

Sadly, his view has the ring of truth and serves as a cautionary tale for those who think otherwise, said Kurt Andersen, author of “Fantasyland: How America Went Haywire, a 500-Year History.”

Andersen, an American writer and Peabody Award winning host of a public radio program, said that Hett’s book illustrates the “conditions and cynical choices that enabled Nazism, in just a few years turning one of the most advanced and liberal societies into a monstrosity.”

His voice has been echoed by Lawyers Defending American Democracy (LDAD), a group formed in 2019 “to galvanize lawyers to defend the rule of law and to hold unscrupulous lawyers to account” for misdeeds.

Recently, the group issued a challenge to America’s lawyers to actively resist what the 2021 Global State of Democracy Report states is a “gradual but significant weakening of [our nation’s] checks on government and civil liberties.” The challenge was announced one year after the attack on the Capitol.

The initiative by LDAD has spawned “The Democracy Commitment,” a pledge written in “response to the legal profession’s failure to speak out against efforts to undermine our democracy, including the right to a free election overseen by impartial officials.”

The Commitment, according to a prepared statement from LDAD, “asks lawyers throughout the country, including in law firms, corporate law departments, law schools, and bar associations at the national, state, regional, and local level, to use their considerable knowledge and community influence to lead efforts to protect such fundamental principles” as:

- Civil discourse and robust debate;
- The repudiation of threats, intimidation, or violence;
- The right to a free and fair election safely administered by impartial officials;
- Equal and unfettered access to the polls in order to exercise the right to vote.

Among those who has offered his full-fledged support of The Democracy Commitment is noted constitutional law scholar Laurence Tribe, professor emeritus of Harvard Law School.

“Our democracy is in grave peril,” Tribe said. “America is at greater risk of backsliding into despotism than it was a year ago, as forces hostile to democracy are successfully implementing laws to undermine future elections. The legal profession has a special obligation to

Words to the wise


“Democracies die behind closed doors... When government begins closing doors, it selectively controls information rightfully belonging to the people. Selective information is misinformation.”

~ U.S. Court of Appeals Judge
Damon J. Keith

Detroit Free Press v. Ashcroft, 2002

use its considerable influence and expertise to protect the rule of law and our democratic institutions that are now under assault. LDAD’s Democracy Commitment is a blueprint for ways lawyers can and must do more.”

To help promote its push, LDAD “committed to the development of program ideas, toolkits, curricula, and other ways to ensure that the legal profession speaks with a more powerful voice on behalf of our democratic institutions,” it said in the prepared statement.

Moreover, LDAD urged lawyers “to stand for the principle that the defense of democracy” is not a partisan issue, contending that it is “the obligation of all lawyers to convince doubters that the defense of democracy at this time is a fundamentally patriotic act.” 

Chapter and verse

Bankruptcy lawyer helps clients chart new business beginnings

By Tom Kirvan

As a business litigator for nearly three decades, Bob Charbonneau has heard his share of lawyer jokes.

More than a few have come from some of the standard-bearers in his family, which has been heavily populated over the years by doctors and dentists, those who swear by a Hippocratic oath “to do no harm,” except perhaps when it comes to poking fun at those in the legal profession.

“My dad was a dentist and he did his best to discourage me from going into the law as a career choice,” said Charbonneau,

one of the founders of Agentis Law, a litigation and restructuring firm based in Coral Gables, Fla. “There was a notion among family members that becoming a lawyer would be a step below those in the healing professions.”

And yet, after his plan to become a Navy aviator was sidetracked by a medical condition, Charbonneau decided to go against the family grain and attend law school, a decision that was validated when he gained admittance to one of the top academic institutions in the northeast.

“Even though I did well in college (at the University of Florida), I was a long-shot to get in to Boston College’s law school, but surprisingly I did,” said Charbonneau. “In all honesty, I’m still amazed that I got in based on my academic record. Apparently, they saw something in me that perhaps I didn’t see in myself.”

His career vision sharpened during his second year of law school when he began taking some business-related courses, a pathway that he continued to follow in his final year at B.C. where he was a writer and then associate editor of a school business publication.

“I found my niche, so to speak, and after graduation was part of a boutique firm focusing on consumer debt and corporate debt matters,” he said. “We ran the gamut, representing clients in Chapter 7, Chapter 11, even Chapter 12 bankruptcy cases involving farm operations. We did a bit of everything, which you can’t do today.”

But somehow, he still does at Agentis, an eight-attorney firm that Charbonneau helped found four years ago with his partners Jacqueline Calderin and Christopher Spuches.



Bob Charbonneau

Agentis traces its legal roots to the boutique business firm of Ehrenstein Charbonneau Calderín, where the current three principals were all partners. The “Agentis” name was the brainchild of Calderín, the current managing partner who earned her juris doctor degree from the University of Miami School of Law.

“We wanted a name that could be easily branded and remembered, and was not egocentric,” Charbonneau explained. “Jacqueline came up with the name Agentis, a Latin word that as a noun means ‘advocate’ and as a verb means ‘effective’ and ‘powerful.’ It is a name that has served us well and Jacqueline deserves the credit for that.”

The firm represents debtors, secured creditors, and purchasers of assets in the area of bankruptcy, insolvency,

and restructuring in both in-court and out-of-court proceedings, according to Charbonneau.

“We’ve developed a practice in commercial litigation and corporate restructuring that also involves real estate law and partnership disputes,” he said.

“Generally speaking, in today’s bankruptcy world you are either known as a ‘creditor’s lawyer’ or a ‘debtor’s lawyer.’ We’ve escaped being pigeon-holed like that and found a successful way to represent both client bases.”

Walking that sometimes fine legal line has produced more than its share of benefits, said Charbonneau.

“As someone who has represented both sides, the experience has given me a 360-degree view of the issues, which has made me more open-minded about how to approach complex and difficult cases,” said Charbonneau.

A native of New York, Charbonneau grew up in Miami, where his family migrated when he was 12 years old. His late father, Robert, practiced dentistry for more than 40 years, while his mother, Delores, was raised in Cuba in a family with a storied political history.

“Her great-grandfather was one of the Cuban patriots in the fight for independence against Spain (in the late 1800s),” said Charbonneau. “He later served as vice president of Cuba.”

The father of three daughters, ranging in age from 18 to 27, Charbonneau already has seen his offspring add even more luster to the family narrative.

His oldest daughter, Rebecca was a Rhodes Scholar finalist and obtained her Ph.D. in history last year from the University of Cambridge. She currently

is Historian-in-Residence at the Harvard-Smithsonian Center for Astrophysics.

Her 25-year-old sister, Sarah, is an honors graduate of the University of Central Florida and is pursuing a master's degree in speech pathology and speech therapy from Boston University.

Charbonneau's youngest, 18-year-old Amanda, is a senior in high school and "is swinging for the fences" when it comes to her college aspirations, according to her father.

"She has her eyes on Harvard, Boston College, Boston University, and the like," he said with a smile.

Charbonneau's smile broadened even more when he was asked to reflect on the success of the past year for Agentis, a firm that prides itself in the pro bono

work it does on behalf of veterans of the armed forces.

"It was one of our best years yet and puts us in a position to grow if we so choose," he said. "Growth is good if its organic and is done with a purpose."


He and his partners have found plenty of purpose with their membership in Primerus, involvement that spans the past seven years, according to Charbonneau.

"I had not heard of Primerus until I received a mailer from them," Charbonneau recalled. "It came in a beautifully embossed envelope, which begged to be opened just based on the presentation. Once I read the message inside, I was intrigued about their programs and their approach."

So much so that Charbonneau and one of his partners booked a flight to New York

City to meet with Primerus founder Jack Buchanan and other members of his team.

"It was an incredibly positive experience and we came away impressed, deciding on the trip back home that we wanted to join," Charbonneau said. "It was one of the best decisions we've ever made, as it has helped link us to law firms around the country and around the world.

"Just as importantly, it has given us the opportunity to participate in their programs and conferences, where we've developed relationships and friendships with fellow members that have been enriching and rewarding," Charbonneau noted. "It's been remarkably useful in helping us develop a culture that aligns with what Primerus is all about." 

Towering palm trees frame an idyllic setting at Fairchild Tropical Botanic Garden, which was founded in 1938 by Robert H. Montgomery, an attorney, accountant, and successful businessman. Photo by Daniela Menendez



Coral Gables, Florida

Widely known as “The City Beautiful,” Coral Gables is famous for its tree-lined boulevards, ivy-covered mansions, and historical landmarks such as the Biltmore Hotel and the Venetian Pool, both built during the Roaring Twenties a century ago.

The city of 50,000 residents is located southwest of downtown Miami and is billed as a Mediterranean-themed planned community featuring the “shopping and dining paradise of the Miracle Mile,” accented by high-quality

stores, boutiques, art galleries, inviting restaurants, and a live theater.

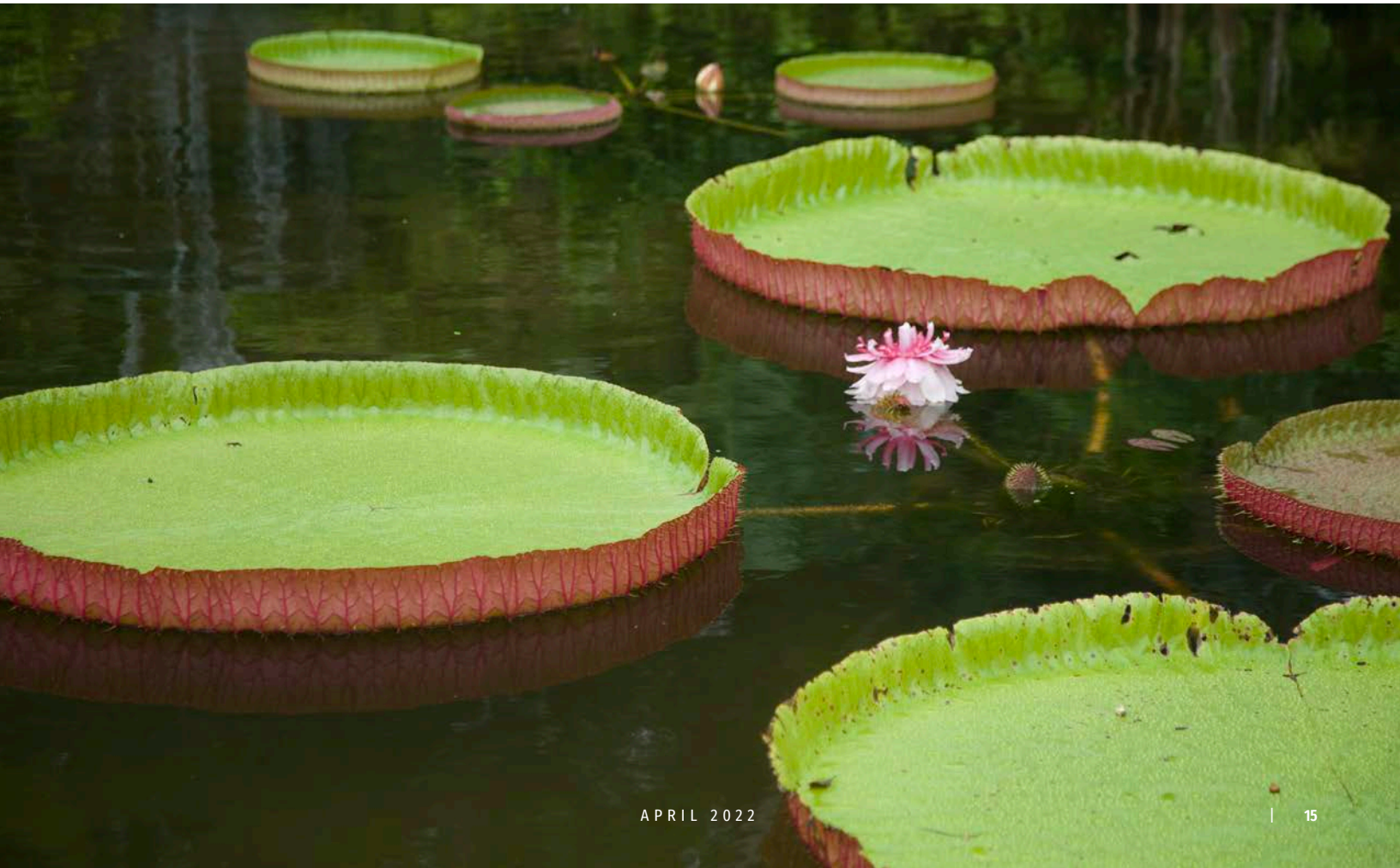
The city was principally developed by George Merrick during the Florida land boom of the 1920s, and the community’s architectural style is mostly Mediterranean Revival. Merrick also reportedly was the brains behind the themed “Coral Gables Villages,” which were designed to expand the city’s architecture beyond Spanish influence to include Italian, French, and Dutch South African.

A popular spot for horticulturalists is the Fairchild Tropical Botanic Garden,

an 83-acre feast for the eyes with 6,000 rare and exotic plants on display, and a butterfly exhibit with rare species from all over the world.

Coral Gables also is home to the University of Miami, a premier private university of some 17,000 students that was established in 1925. Among its most famous alums are actor Sylvester Stallone, singer Grace Slick, Olympic gold medalist Greg Louganis, and famed attorney Vincent Bugliosi. [P](#)

An array of lily pads is an eye-catching feature at the Fairchild Tropical Botanic Garden in Coral Gables. The popular 83-acre horticultural treasure is named after the late scientist David Fairchild, one of the most famous plant explorers in history. Photo by Daniela Menendez



Matter of faith

Attorney pinned his legal hopes on art of relationship building

By Tom Kirvan



The power of prayer has been a key element in the career success enjoyed by New Jersey attorney Tom Paschos, a man who places family and faith above all else. His five-attorney firm also includes Thomas Gallagher, Kelly Lavelle, James Corrigan Jr., and Katie Grillo.

Around the time he opened his law practice in 2000, Tom

Paschos was asked if he had a business plan, the type of document designed to assure interested parties that he had a blueprint for achieving financial – and legal – success.

“Prayer,” he answered.

For a man of faith, it seemed like a perfectly acceptable answer, even if his reply raised more than a few eyebrows.

“I know for a fact that my wife wasn’t exactly enamored by my response,” Paschos said with a hearty laugh. “I’m sure she was hoping that I had a few other thoughts in mind.”

Indeed he did, principally revolving around a meaningful word that has served as one of the linchpins of his law practice – relationships.

Paschos, who was born in Greece and lived there until the age of 10, has taken pride in the relationships he has developed over the course of his 37-year legal career. In fact, those relationship bonds provided much of the impetus for his decision to open Thomas Paschos & Associates, P.C., a civil defense firm that is headquartered in Haddonfield, New Jersey with a satellite office in nearby Philadelphia.

“I’ve been fortunate to have forged great relationships with my clients over the years, developing a kind of kinship with them as I’ve handled their various legal needs,” said the 61-year-old Paschos. “Creating those types of relationships, and cementing them by doing our best work possible, have been at the heart of our law firm.”

His firm – and his practice in particular – specializes in “the defense of professional liability matters, corporate litigation matters, insurance coverage, employment matters, products liability, and commercial litigation,” according to Paschos.

The work, he said, has been “fascinating and demanding,” and can feature “cases within cases” especially when representing lawyers facing claims of legal malpractice.

“As a lawyer, defending those type of cases really resonates with me, knowing full well that the stakes are high for a client whose professional reputation and future ability to practice are being questioned,” said Paschos, who earned his law degree from Temple University School of Law in 1985.

Many such cases have ended up in court, where Paschos has excelled thanks in large part to a decision early in his legal career to obtain a Master of Laws (LL.M.) in Trial Advocacy from Temple School of Law.

“There I sharpened my trial skills by learning from some of the finest practitioners in the Philadelphia legal community,” Paschos indicated. “Obtaining my master’s in law from Temple School of Law gave me the confidence to open my own practice. I learned from some of the best trial lawyers around, enhancing my ability to successfully navigate my way around a courtroom. I went into that program with the thought that I knew how to try a case, and I left with the belief that ‘I now really know how to try a case.’ The difference was amazing.”

Paschos was 39 when he began his firm after spending the first 15 years of his career with two “outstanding” small defense firms in Philadelphia, for whose mentorship he is “very grateful,” he said.

“It was a risky proposition,” Paschos said about the decision to step out on his own. “I prayed and prayed and prayed some more about it. I distinctly remember reading one of the parables about ‘putting

new wine into old wineskins,’ which was pivotal in my decision to start anew.”

It should come as no surprise that Paschos leaned on history to help with the decision, for he has had a lifelong love of the subject, fed perhaps by his early upbringing in a country steeped in ancient lore.

“Greece, of course, is the birthplace of democracy and is well known as the ‘Cradle of Western Civilization,’” noted Paschos, who speaks Greek fluently. “I’ve always loved and been fascinated by history and the many lessons we can learn from it.”

His father was a tailor in Alistrati, a small town in the Macedonia region of Greece, when in 1970 he made a life-changing decision to emigrate to the United States. The move to “find a better future” for his family in the so-called “land of opportunity” was not an easy transition. Two years after the move to the U.S., Paschos lost his mother to a brain aneurysm that claimed her life at the age of 39.

The family, which included two young sons, settled in the Delaware County community of Upper Darby, a Philadelphia suburb that bears the motto, “The World in One Place.” It’s an apt description for a diverse municipality that is home to more than 100 ethnic cultures.

“I was part of the high school soccer team there and it really was representative of the United Nations,” Paschos said with a smile.

After receiving his high school diploma, Paschos didn’t travel far to attend college, enrolling in Drexel University, a private research university in Philadelphia. It was there that he became better acquainted with his future wife, Lucy Tierney, thanks to his – and her – involvement in another sport. They had first met, through tennis, while in high school.

“We both played on the Drexel varsity tennis teams,” said Paschos. “We both really enjoyed the sport and the

competition. The fact that we eventually got married obviously was the best part of that entire experience, and of getting to know each other initially and through tennis.”

While at Drexel, Paschos took part in the university’s co-op program, working first for RCA and then Thomas Jefferson University Hospital.

“At both jobs, I was crunching numbers all day long,” he explained. “It served as a big awakening for me, as I discovered that I was better suited for a profession where I could utilize my writing skills.”

Hence the decision to attend law school, followed a year later by marriage to his beloved Drexel classmate, once she graduated from Drexel and he from law school.

“I can honestly say that I love my wife now more than ever and have been incredibly blessed by her presence in my life,” said Paschos. “She is a godsend. I am so fortunate to be with her in this amazing journey we call life.”

The couple has six children, one grandson, and a granddaughter who was born in late March. Their children include Lucy, Stephen, Mary, Joe, Catherine, and Monica, a high-achieving group that ranges in age from 18 to 33.

“They all have their special talents,” Paschos said with more than a hint of pride. “Most importantly, they all have their hearts and minds in the right place. They are the best part of us.”

So far, none have followed their father into the legal profession, although the family patriarch is still holding out a glimmer of hope.

“Let’s just say there are a couple of excellent candidates, so as not to apply any undue pressure.”

Paschos, whose 94-year-old father returned to his native land upon retiring, has been active in the Greek-American community, and is a past president of the


American Hellenic Lawyers Association and past national chairman of the Pan-Macedonian National Convention.

On the political front, he has been actively involved in local, state, and national election campaigns, while also utilizing his legal skills to represent “political organizations in election court matters.”

At some point in the near future, Paschos is hopeful that he can share some of those courtroom skills in a trial academy he envisions for Primerus.

“I think it would be a great addition to the Primerus offerings, which as a whole have meant a tremendous amount to the success of our firm since we joined in

2008,” said Paschos, who has presented numerous programs and webinars for the international alliance. “We have some of finest legal minds in the world at our reach because of Primerus, and our firm has been fortunate to benefit from and to contribute to this great Primerus alliance.

“And yes, it is a great feeling to give back freely, to refer our clients and friends to other Primerus firms throughout the country, and to give the gift of our talents, our knowledge, and our very hearts and selves,” Paschos said. “It’s true that it is ‘better to give than to receive’ and that ‘we find ourselves by getting out of ourselves and helping others.’” 



In a treasured photo, Tom Paschos anchors a family shot featuring (left to right) Ben, Teddy, and Lucy O’Brien; Stephen; Grant and Mary Latran; Joe, Catherine, and Monica Paschos; and his wife, Lucy.

Haddonfield, New Jersey

Some 10 miles from the heart of Philadelphia, Haddonfield is a charming town of 12,550 residents that traces its roots to the Colonial days of 1682 and is named after the father of one of its foremost settlers, Elizabeth Haddon.


While dwarfed in size and population by its big-city neighbor, Haddonfield has carved out a reputation as one of the “best places to live, shop or dine in the Delaware Valley,” the historic region through which the Delaware River flows.

Its downtown features more than 200 shops and galleries, and an array of enchanting restaurants that will appeal to every age, taste, and pocketbook, according to those who tout the retail center’s old-world hospitality where “courtesy is the norm” and shopping can be a “rejuvenating experience.”

Bordered by the Cooper River, a tributary of the mighty Delaware, Haddonfield is rich in history and is home to the second oldest volunteer fire department in the country. The famed Indian King Tavern in Haddonfield served as the meeting site of the New Jersey General Assembly in 1777 at which the legislature officially ratified the Declaration of Independence.

In a nod to the pre-historic era, downtown Haddonfield is graced by the presence of a statue of Hadrosaurus, a type of dinosaur that reportedly roamed the area millions of years ago. The statue has gained landmark status over the years and serves as a mascot of sorts for Haddonfield residents. The nearly intact skeleton of the dinosaur was discovered in 1858 at a marl pit in Haddonfield.

Today, due to its close proximity to Philadelphia, Haddonfield is home to many of the “super stars” of the professional sports teams, such as the

Philadelphia Eagles, Flyers, and Phillies. Its elementary, middle, and high school are consistently ranked among the finest public schools in New Jersey. 



A statue of “Haddy” the dinosaur is a downtown focal point in Haddonfield.

A close-up photograph of vibrant green cannabis leaves with serrated edges, filling the background of the page. The leaves are in sharp focus, showing their intricate vein structure.

Growth industry

**Attorneys help
cannabis clients
steer way through
legal maze**

By Tom Kirvan

O

ne outgrowth of the burgeoning marijuana industry is the increasing

number of lawyers and law firms nationwide that have embraced the concept of a legitimate cannabis practice.

In one sense, it's all about "weed control" for the state and local agencies that regulate the legalized sale and recreational use of marijuana, which has spread across 18 states since Colorado and Washington blazed the green trail a decade ago.

And those oftentimes hazy cannabis laws have proved to be both a boon and bane to attorneys advising "touch-the-leaf" businesses on how best to navigate the occasionally choppy waters of regulatory compliance.

Just ask Michelle Mabugat, a corporate and transactional attorney for Greenberg Glusker, a single-office law firm in the Century City district of Los Angeles.

A 2011 graduate of the University of Southern California Gould School of Law,

Mabugat quickly became one of L.A.'s "go-to" lawyers in the field of cannabis law, so much so that she was one of the co-authors in 2017 of a book titled, "Legal Weed: A Comprehensive Guide to California Cannabis Law & Regulation."

At the time it was published, the book was viewed as a trusted guide on how those in the cannabis business could stay on the right side of the law.

Until it wasn't.

"It took about three months before the book was outdated," Mabugat lamented. "That's how fast the cannabis landscape was changing – and continues to change as the fragmented laws and regulations for cannabis change on a yearly, monthly, weekly, and sometimes daily basis.

Someone recently compared my legal experience in this industry to an 'athlete training at altitude,' and I couldn't agree more. You have to be able to turn on a dime and think more creatively than your average lawyer."

Particularly in the nation's most populous state of California, which Mabugat said "might as well be divided into two states" when it comes to marijuana production.

"In northern California, most of the cultivation is done outdoors or in greenhouses," she explained. "In southern

California, virtually all of the growing is done in giant warehouses, where everything is in a controlled environment not subject to the whims of the elements. Those growing in the northern part have seasonal harvests, while growers in southern California can harvest their crops every 6 to 8 weeks. It's a big difference in yearly output."

In 1996, California became the first state in the country to legalize the use of medical marijuana, according to Mabugat, who received her bachelor's degree from U.C.L.A, the cross-town rival of her legal alma mater U.S.C. In late 2016, California voters approved a ballot initiative that legalized recreational use of weed by adults.

"California has been at the forefront of the cannabis industry for years and other states have kept watch over our successes and failures in regulating the business," said Mabugat, noting that there are more licensed cannabis businesses in the state than there are McDonald's and Starbucks outlets combined.

The state's greatest challenge in regulating the marijuana industry, which reportedly has generated upward of \$2.8 billion in tax revenue since 2018, is dealing with an entrenched black market

continued on page 22



Michelle Mabugat, Alexandra Becker, Carrie Ward, and Eric Sleeper (left to right) are four members of the recently formed Cannabis Practice Group that is part of the Primerus alliance. The group hosted a webinar on February 22, discussing a host of issues for those interested in the ever-evolving field of cannabis law, both domestically and internationally.

or “legacy” market that sidesteps the tax-man and makes it difficult for licensed operators to compete, Mabus indicated.

“The state has tried to step up law enforcement actions, but dealing with those in the legacy market is like playing a game of whack-a-mole, where they shut down an illicit operator and another pops up somewhere else,” said Mabus, who noted that illicit market prices can be half as expensive as from regulated sources.

Mabus is one of two attorneys at Primerus member Greenburg Glusker who primarily concentrate their practice on cannabis and hemp-related matters.

“It was a thousand percent by chance that I got into this field, but I must admit that it has been a fascinating experience to be one of the first legal pioneers involved in such an evolving part of the law,” she said. “I derive a great deal of satisfaction from puzzling together creative business solutions for my clients and defending them when faced with regulatory enforcement actions.”

Alexandra Becker – a partner with the Nolan Heller Kauffman law firm in Albany, New York – also is part of the recently formed Cannabis Practice Group in Primerus. Her interest in cannabis law has been sparked over the past year by the State of New York’s decision last fall

to legalize marijuana for recreational use after years of failed attempts.

“Relatively speaking, New York is a late entrant to the legalization movement,” said Becker, whose law practice has been dominated in recent years by liquor licensing matters. “Obviously, states like California and Colorado have been at the forefront of the movement and have a huge head start on states that have recently adopted legalization legislation.”

With a population of approximately 20 million people, New York is the fourth most populous state in the nation, making it an especially attractive and potentially lucrative market for marijuana growers and sellers, according to Becker.

“Currently, a lot of that potential tax revenue is going to neighboring states such as Massachusetts,” Becker explained. “While the recreational use of marijuana in New York became legal last fall, selling cannabis is not legal until all the regulations are in place, which might not be until this summer or fall. There is a sense of urgency to get all the regulations in place so as not to miss out on any more tax revenue, which is projected to be in the neighborhood of \$1.2 billion over the next six years according to budget estimates.”

The state dipped its proverbial toe in the cannabis water in 2014 when it adopted the Compassionate Care Act, which legalized the sale and use of marijuana for medical purposes, according to Becker.

“Traditionally, legalizing medical marijuana has been the first step for most states,” said Becker, who earned her bachelor’s degree from Johns Hopkins University in Baltimore and her juris doctor from Villanova University School of Law in 2014. “The step to legalizing it for recreational use has been a tougher sell politically in some states, although more and more are adopting it principally because of the potential tax revenue.”

Currently, Becker is the lone attorney at Nolan Heller Kauffman who is dealing with cannabis legal matters, although that could change as the industry begins to take hold in the next few years, she said.

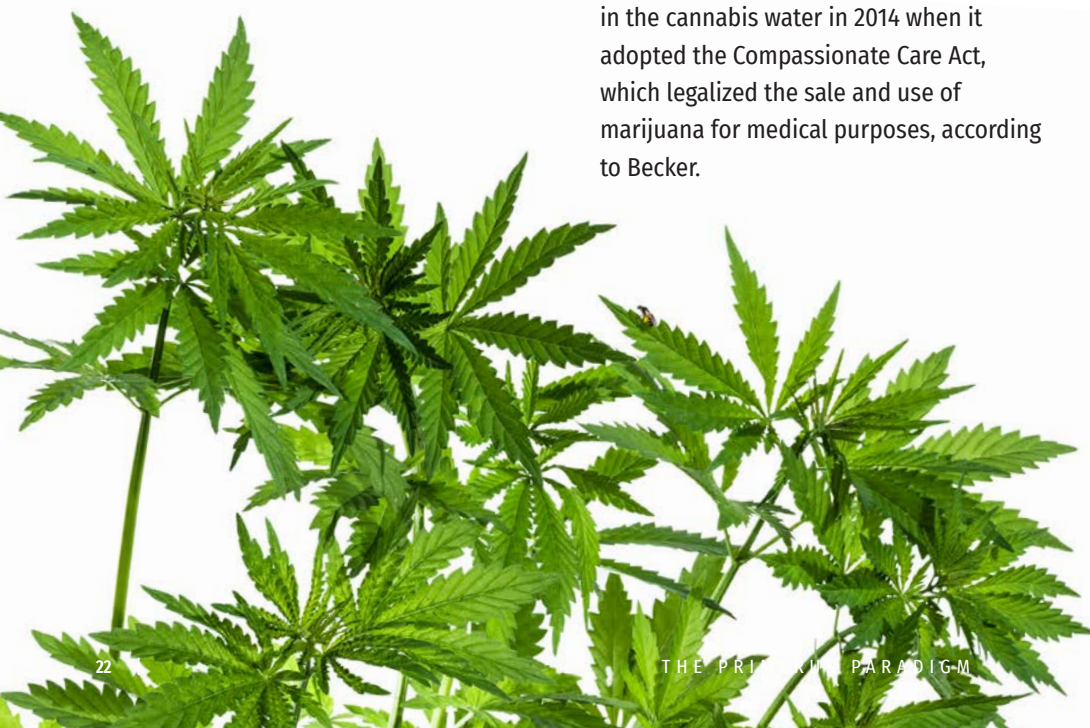
“In some respects, I expect that many of the issues I deal with in liquor licensing will be similar to what will be presented in the cannabis area,” she said. “Of course, one of the major differences is that marijuana is still classified as an illegal drug on the federal level and that has impacted the banking industry’s involvement.”

Attorney Carrie Ward, a partner with the Primerus firm of Earp Cohn, P.C. of Cherry Hill, New Jersey, has watched with special interest over the past two years as her native state inches closer to granting licenses for cannabis businesses catering to recreational users of pot.

“State voters gave the green light to recreational use back in the fall of 2020 and the legislature set licensing plans in motion on February 22, 2021 with the first licenses to be issued beginning a year later on February 22, 2022,” Ward indicated.

But that timeline was not met as state officials wrestled with a host of nettlesome issues, principally centered on how best “to level the playing field” for cannabis suppliers, according to Ward, who earned her juris doctor from Rutgers Law School.

“The medical use of marijuana has been in place for around a decade in New Jersey, although initially only a limited number of licenses were granted,”



explained Ward, who has a business law practice with a particular focus on the entertainment, communications, and media areas. “Several years ago, the number of licenses was expanded and collectively all those suppliers are poised to enter the recreational market as soon as they get the go-ahead from the state. In effect, they would have a huge head-start on those looking to get into the recreational side of the industry, which is why the licensing process is taking longer than expected.”

The “big players” in the cannabis business, said Ward, are “chomping at the bit” to start selling to recreational users in New Jersey.

“They already have the growing and distribution infrastructure in place, so those major suppliers would have the potential to create a monopoly, squeezing out the smaller companies who want to get into the market,” Ward indicated. “State officials are trying to figure out a way to ensure that there are opportunities for whatever size company you have.”

Each delay compounds the frustration not only for potential suppliers, but also for state treasury officials who project that marijuana sales will generate upwards of \$300 million annually in tax revenue.

“And, of course, that’s money that can be spent for the schools, the roads, and various other important needs the state wants to address,” said Ward, who expects that “more and more” of her practice will be devoted to cannabis law in the years ahead.

“The laws are all over the place and nothing is black and white in the cannabis business,” said Ward. “And that doesn’t begin to take into account the inherent tension between federal and state laws regarding marijuana use. It’s just one of the many reasons it will be especially important to have legal help in that type of business, where there are so many

uncertainties and compliance issues to be sorted out.”

Eric Sleeper, a longtime partner with Barton LLP in New York, has spent much of his career on creditor-debtor rights, restructurings, cybersecurity, corporate bankruptcy, and commercial litigation matters, but in recent years has kept a close watch on legal issues impacting the cannabis industry.

“Barton LLP is very entrepreneurial focused in our legal practice and in advising our clients in getting, and maintaining, a firm toehold in industries like cannabis,” said Sleeper of the law firm that also has an office in Nashville. “The cannabis industry, in turn, is highly entrepreneurial. The growth of the industry has been just short of phenomenal over a period of less than two decades. Medical marijuana did not start to become legalized in the U.S. until the late-1990s beginning with the state of California. It was only roughly a decade later, in or about 2012, that legalization followed in the U.S. for the recreational, adult-use market through the states of Colorado and Washington. Since then, legalization has skyrocketed throughout this country. Now, a majority of states have legalized medical cannabis and more than a third have done so also for recreational use.


“Simultaneously, following Canada’s cannabis legalization other countries are beginning to move towards legalization in one shape or another,” indicated Sleeper, an honors graduate of Emory University School of Law in Atlanta. “The Netherlands, Luxembourg, and Malta, in particular, are already well down that path. But other large countries are in kind giving serious consideration towards legalization, including Germany, Italy, Mexico, South Africa, etc. It is an exciting time to be a part of this, a very open and make-law field from a legal practice standpoint, and one requiring knowledgeable legal advice for a whole series of legal considerations

to have a successful business, directly or ancillary, to the cannabis industry. After almost four decades of practicing primarily in the corporate restructuring field, I am thrilled to have expanded my practice to advising clients in this high growth industry.”

Sleeper said that “worldwide sales of legalized marijuana topped \$21 billion in 2020 and projections show market growth rising above \$100 billion by 2028,” a meteoric rise that has huge tax implications for governmental entities around the globe.

And yet, cannabis use is still illegal under federal law in the U.S. and it remains unclear if that will change anytime soon, said Sleeper, an alum of Rutgers University, where he was inducted into the prestigious Phi Beta Kappa Society.

“I have no crystal ball when it comes to federal decriminalization and/or legalization towards marijuana,” he said. “Fortunately, pursuant to the Hemp Farming Act of 2018, the federal government removed hemp as a Schedule 1 controlled substance and opened a wide-ranging market for the cultivation, production and sale of industrialized hemp and hemp-related products.

“At the same time, there remains a significant portion of Congress (as well as the U.S. public) that supports decriminalization and legalization of recreational, adult-use marijuana,” Sleeper noted. “Given the obvious failures of the War on Drugs, the billions of taxpayer funds that have been lost ‘fighting’ that War, and the obvious social inequities resulting from the criminalization of marijuana, I would like to believe that decriminalization has a stronger chance of becoming a reality sooner at the federal level in advance of legalization. Obviously, as with the states and certain countries, decriminalization tends to then open the door wider towards overall legalization.” 

Anti-bribery

Countries, cultures deal with corruption in differing ways

By Tom Kirvan



Primerus members (left to right) Tomislav Šunjka of Serbia, Kengo Nishigaki of Japan, and Dominic Wai of Hong Kong are well-versed in anti-corruption and white-collar crime issues.

W

hen it comes to rooting out corruption, the Republic of Serbia has

much work to do, according to Transparency International, which ranked the landlocked nation in Southeast Europe “96th among 180 countries in its 2021 Corruption Perceptions Index report.”

The ranking came as no surprise to attorney Tomislav Šunjka, the founder and principal of ŠunjkaLaw, a business law firm located in Novi Sad, a city of nearly 300,000 in northern Serbia on the banks of the Danube River.

In 2013, according to Šunjka, the country rolled out a “National Strategy for Combating Corruption and the Action Plan” for the “realization of said Strategy” that concluded in 2018. A “detailed analysis of the execution of the National Strategy and Action Plan” was eye-opening, he said.

“The report is devastating,” Šunjka said in decidedly frank terms.

“The Action Plan was a set of measures and activities, both political and legal, which were to be implemented, adopted or amended within the envisaged period of five years,” Šunjka indicated. “According to the Agency’s official report: 62 percent of the measures and activities have not been implemented; for 12 percent of the measures, it cannot be determined if they have been implemented at all; and only 26 percent of the measures have been implemented.”

Šunjka, whose range of business clients cuts across the European and Asian continents, is recognized as an authority on anti-corruption and anti-bribery matters in the global marketplace. His efforts are grounded on a commitment to conduct business in accordance with the highest ethical standards, which he hopes will become the norm across Serbia.

“Special departments of the Prosecutor’s Office for fighting corruption, located in four cities across Serbia, started working in March 2018,” Šunjka related. “The main topics of their work are: the detection and prosecution of perpetrators of criminal acts in the field of economy and finance; proactive investigations in these areas, especially in the field of public procurement; and conducting financial investigations in the fight against corruption. The final goal of their work is the recovery of assets for victims of corruption. Special forensic departments in the fields of finance, stock exchange operations, foreign exchange operations, taxation, foreign trade, bookkeeping and similar were established within the framework of special prosecution offices, which should, as part of their expert work, help and assist prosecutors in the procedures they lead.”

Still, Šunjka said, the underlying perception of Serbia on a global scale is far from glowing.

“According to the United Nations Development Programme, there is an impression given of high levels of corruption in Serbia,” Šunjka said.

“The Council of Europe’s anti-corruption body, GRECO, says in its November 2020 Report that Serbia has implemented satisfactorily only two of its 13 recommendations made back in 2015; namely, those on the interaction of parliamentarians with lobbyists, and on strengthening the role of the Anti-Corruption Agency,” Šunjka noted. “Ten recommendations have been implemented only partially, and the recommendation on the adoption of a Code of Conduct for parliamentarians has not been implemented at all.”

The perception, not surprisingly, is far different when it comes to Japan, which boasts the third-largest economy in the world when measured by GDP (Gross Domestic Product).

Tokyo attorney Kengo Nishigaki, who founded the GI&T Law Office in 2020, said “we rarely see public officials seeking bribery.” And if a client of his does encounter a government official seeking an “unlawful benefit,” Nishigaki offers one piece of advice.

“My advice is usually very simple, ‘Just say no,’” he said candidly.

Japan, according to Nishigaki, is “one of the cleanest countries in the Asia Pacific,” ranking 19th on the Corruption Perception Index (CPI) of Transparency International, the global organization that monitors bribery and corruption prevalence in countries around the world.

“We do not encounter any bribery in daily lives,” Nishigaki said. “However, in certain areas such as health care, construction, and politics, we sometimes see bribery cases.”

The Penal Code of Japan, Nishigaki noted, “has a few provisions regarding bribery to public officials, which penalize only natural persons, not legal entities.” Japanese law, he added, does not penalize commercial bribery.

“Further, under Article 18 of the Unfair Competition Prevention Act, bribery to foreign officials is prohibited, where both natural persons and legal entities may be punished,” Nishigaki indicated. “The maximum amount of fine is 300,000,000 yen (approximately \$3 million in U.S. currency). In terms of its extra-territoriality, if all or part of the conduct is done in Japan, or it is conducted by a Japanese national, the Act will be applicable. Although this was legislated over 20 years ago, there have been only nine cases. Thus, the enforcement is not so active.”

Nishigaki, who earned his law degree from the University of Tokyo and his LL.M. from the New York University School of Law, spent 20 years of his legal career with Baker & McKenzie. From 2004-05, he worked at the firm’s Chicago office, focusing on matters related to compliance with the U.S. Foreign Corrupt Practices Act.

“I often advise them (clients) about how to avoid bribery ‘outside’ Japan, because most major Japanese companies have foreign operations especially in the APAC (Asia Pacific) region,” Nishigaki explained. “They are often asked to pay bribery when they obtain/renew a license, secure a government contract, go through government’s audit, import/export goods through foreign customs.”

The anti-bribery landscape is much the same in Hong Kong, according to Dominic

Wai, a partner with ONC Lawyers, a Primerus firm that was established in 1992.


“According to the Independent Commission Against Corruption (ICAC) in Hong Kong, the statutory body that enforces anti-bribery laws in Hong Kong, the corruption in both the public and private sectors . . . has been kept effectively in check,” said Wai, who formerly worked for the ICAC. “According to the ICAC Annual Survey findings, 98.4 percent of the people polled said they had not personally come across corruption in the past 12 months. Hong Kong also has a good ranking in the CPI of Transparency International, ranking at 12 out of 180 jurisdictions.”

Wai, a business litigator who focuses on regulatory and compliance matters, said that the anti-bribery laws in Hong Kong are “similar to that in the United States but have its own unique features and are more expansive in some areas.”

For instance, said Wai, under the U.S. Foreign Corrupt Practices Act (FCPA), “facilitation payments are allowed whereas under the Hong Kong Prevention of Bribery Ordinance, a payment to a government official is not allowed, even if it is for facilitation and routine, and the amount is small.”

The FCPA, Wai explained, is a U.S. federal law that prohibits American citizens and entities from bribing foreign government officials. It is enforced by the Department of Justice and the Securities and Exchange Commission.

Wai, who earned his law degree from City University of Hong Kong, said he cautions clients to be wary of any official who appears to be soliciting a bribe.

“The important thing is not to pay, as offering a payment to a government official is an offense even if the amount is petty,” said Wai. “I would advise the client to consider reporting the matter to the ICAC so that if there is really a rogue government official, the person could be apprehended and not affect the client’s dealings with the relevant government department or authorities.” 

A 'Pillar' of hope

Plans for the Primerus Foundation take shape at global 'tipping point'

By Tom Kirvan



John C. Buchanan



Joel Collins

In the aftermath of the latest batch of bad news from home and abroad, two central figures in Primerus have joined forces with a singular purpose in mind – to create an international foundation designed to promote global peace and understanding by embracing the fundamental concepts of freedom, liberty, justice, and equal opportunity for all.

Plans for the nonprofit entity, which will be an outgrowth of the International Society of Primerus Law Firms, were unveiled this month by Primerus founder Jack Buchanan and longtime board member Joel Collins, each of whom have pledged significant financial contributions to help launch the foundation.

Their plans took on an added sense of urgency in early March following the Russian invasion of Ukraine, according to Buchanan, who has served as the president of the Primerus alliance since its founding in 1992.

“The onset of the war in Ukraine was, in effect, the ‘tipping point’ for us, accelerating the timetable for launching the foundation,” Buchanan indicated. “Over the years, a number of our members have expressed a desire to start a foundation that would further spread the Six-Pillar message that is at the heart of Primerus. The Russian invasion made the need for our foundation even more important to help counter the unjustified acts of tyrants and demagogues around the globe.”

The creation of the foundation comes at a time when conflict over culture, politics, land, religion, and race

is flaring in countries across the world, Buchanan said.

“This mission of ours is much bigger than merely uplifting a profession, which was the original goal of Primerus,” said Buchanan. “The stakes, obviously, are much higher when we consider that, in this case, we are dealing with one man who has the nuclear power to bring the entire world to the edge of the abyss.”

The foundation’s task, said Buchanan, will be a tall order to counter long-held political practices and cultural beliefs that threaten the very existence of a free society itself.

But Buchanan remembers well the seemingly insurmountable challenge he faced when he started Primerus, dispelling a false narrative that had dogged the legal profession for years, subsequently drawing inspiration from key supporters like South Carolina attorney Joel Collins.

Collins, who will serve as president of the Primerus Foundation, is a longtime student of history and has the academic chops to fully understand the root of the world’s problems. An adjunct professor at the University of South Carolina, Collins teaches a course on the United States Constitution, a document that serves as the backbone to the American system of justice.

Its creation is a storehouse for some of Collins’s favorite stories of character and conviction involving such Founding Fathers as Washington, Jefferson, Franklin, Adams, Monroe, and Madison. Each man possessed a “certain something” that is mostly missing in today’s leaders, according to Collins.

“Our Founding Fathers were men who had their flaws but who understood and revered human virtues,” Collins said. “These virtues defined them and guided them. George Washington, in a letter to Marquis de Lafayette, said, ‘Virtue or morality is a necessary spring. Human


rights can only be assured among a virtuous people.’ John Adams, in a letter to Mercy Otis Warren, said, ‘Public virtue cannot exist in a nation without private virtue, and public virtue is the only foundation of republics.’

“So, what are the virtues to which our Founding Fathers were referring?” asked Collins. “A few of them are kindness, compassion, honesty, humility, integrity, and courage. Winston Churchill said, ‘Courage is the most important virtue because it makes all other virtues possible.’”

Sadly, said Collins, from today’s leaders “we never hear any discussion of the vital human virtues necessary for leadership.”

The Primerus Foundation aims to change that, Collins said, offering a “rich mine of moral literacy” and a “reliable moral reference point” that can help anchor young and old alike in times of uncertainty when humanity is shaken by incomprehensible acts of violence.

With that goal in mind, Collins said that the Primerus Foundation carries the promise of a “virtuous” safe harbor, helping restore faith that “good” can prevail in a world stained by those seemingly bent on destroying it.

“Years before our Declaration of Independence, there were a few members of the British Parliament who supported the struggle for freedom in the British Colonies of North America,” Collins related. “Their leader was William Pitt, the Elder. At a dedication ceremony of a statue of William Pitt over 250 years ago in London, which was financed by the citizens of the grateful South Carolina Colony, another member of Parliament, one of my favorites, Edmund Burke, stated, ‘The means by which Providence raises a nation to greatness are the virtues infused into great men.’” 

Safe haven

Noted German attorney and his wife extend helping hands to war refugees

By Tom Kirvan

A Ukrainian refugee, 10-year-old Lena has found a safe and happy home in Germany thanks to the Brödermann family, which includes a four-legged friend named Whisky. Lena also brought along her own dog, Bycei, from the Ukraine.



In late February, German lawyer Dr. Eckart Brödermann and his wife, Silke, began an unexpected odyssey that figures to change – and enrich – their lives forever.

It came in the wake of three funerals that the couple attended over the span of a week, including a memorial service for a “professor friend at age 55 with whom I taught for years” at the University of Hamburg in the northern region of Germany, according to Brödermann.

The seeds for their trip were sewn while en route to the third funeral when the gravity of the recent Russian invasion of Ukraine hit home.

“We were informed that the Ukrainian family of our son’s girlfriend was suddenly fleeing for their lives, joining thousands of other war refugees seeking safety at the borders of neighboring countries,” Brödermann indicated in a Zoom interview March 14.

“On the way from the cemetery to the funeral reception, we decided to change gears and to leave that same night for Leipzig in the Southeast,” said Brödermann of the four-hour drive to the most populous city in the German state of Saxony. “The next day we drove another 14 hours via Prague, Bratislava, and Budapest to the Hungarian-Ukrainian border, which was less crowded than the Polish border.”

It was there, at a crossing in which guards let cars pass through at an agonizingly slow pace of one every 20 minutes, that the Brödermanns began providing a safe haven for five Ukrainian refugees, including a mother, three children, and an aunt.

“We welcomed our new family at the border at midnight,” Brödermann said of the homecoming of sorts. “After a short night in a hotel where we had pre-

organized five rooms, we drove during the next two days the way back (to Hamburg) . . . We then started to channel the family through bureaucracy.”

That, he acknowledged, was not an easy task, as “Germany has not learnt so much so far from the refugee crisis in 2015,” when more than 1 million asylum-seekers came to the country as a result of the wars raging at the time in Syria, Iraq, and Afghanistan.

Hamburg’s initial response to the expected influx of refugees from Ukraine came woefully short of what will be needed in the coming months, Brödermann said.

“They made plans for 1,000 beds, which won’t even begin to address the scale of the crisis,” said Brödermann. “If the war continues to escalate, officials project that more than 2 million refugees could be seeking shelter in Germany over the next year, which means several hundred thousand in the Hamburg region alone. The need will become greater by the day.”

To help address that demand, Brödermann is teaming with the “chief person in charge from the Ukrainian site to support with the reception of several hundred thousand refugees” expected in Northern Germany over the next few months.

“I am coaching her for a meeting with the Mayor, our Prime Minister,” he said. “Through the Hamburg Bar, I am trying to set up a pool of volunteer lawyers.”

Brödermann, who founded the Brödermann Jahn law firm in 1996, also is working to install a call center to help the Ukrainians who have been displaced by the war.

“I have set up in liaison with the mayor of Kyiv and his wife, an NGO (not for profit association) of which I am the president,” said Brödermann. “Natalia Klitschko, the wife of the mayor, is a member of the board and our honorary president. One of the mothers who now live in our house as our extended family, Nataliia Korniienko, is one of my two vice presidents. The



A renowned business law author and expert, Dr. Eckart Brödermann has taught for 25 years pro bono at the University of Hamburg, one of the top colleges in Germany. His firm has been a member of the Primerus alliance since 2011, and he currently is chair of the International Practice Committee and serves on the Primerus Board of Directors.

mayor of Kyiv, Vitali Klitschko, and his brother Vladimir serve as ambassadors of the NGO. Further board members and members of the association are coming from Ukraine and Germany to provide a basis for developments of mutual friendship beyond this war. However, as our first important step, we are integrating a call and information center in which Ukrainian refugees can seek advice and information from a hotline.

“And it will be staffed by people who speak the Ukrainian language so that their questions can be heard and understood,” said Brödermann.

In addition, Brödermann has begun a campaign to discard the use of the term “refugee,” claiming that it further stigmatizes them as “second class citizens” in their adopted country.

Said Brödermann: “A better term would be ‘People Seeking Protection,’ which would help treat them as our guests, and with the honor and respect that they deserve.”

In the meantime, the Brödermanns no longer are empty-nesters. Their four children, ranging in age from 21 to 28, left the family homestead years ago, and either are well into their professional careers or are pursuing college studies. Their children are Kai (28), Tim (26), Per (24), and Fee (21).

“Overnight, we now have seven children instead of four,” Brodermman said of the new additions to the family. “At our house, we have now living with us

the mother and the little sister (Lena) of my son’s girlfriend, as well as her aunt with two teen-agers, 19 and 16.”

Lena, age 10, has adapted well to her new homeland and “can already count in German up to 130,” Brödermann said proudly. The two teens, Stasia (16) and Konstantin (19), also are making a smooth transition, thanks in part to their English-speaking skills.

“We’re doing our best to integrate them all into our educational system in Germany so that they can get the schooling that they need,” said Brödermann, who earned an LL.M. from Harvard University in 1983 and spent a year practicing law in the United States after passing the New York bar exam.

The ordeal they have recently experienced is reminiscent of what Brödermann’s parents suffered in the final years of World War II when Allied bombing reduced many of Germany’s major cities to rubble.

“My mother, who is 88 now, was just a young girl in Hamburg when it was bombed to ruins,” Brödermann said. “It was a miracle that she survived. The same can be said of my father, who lived in Berlin during World War II.

“I would never have imagined that we would be seeing this same sort of thing again. It’s really hard to believe what the Russians are doing to their sister country, killing thousands and thousands of civilians. What we are witnessing is impossible to understand.” 📌

Give back

Law firm helps kids in need succeed, while also aiding Mother's Day cause

By Tom Kirvan

A

back-to-school drive last fall had a twofold meaning for the Primerus firm Martin George & Co. in the twin-island Caribbean nation of Trinidad and Tobago.

In tandem with the Liz N Williams Foundation, the Trinidad-based law firm helped supply scores of backpacks to needy children headed back to school in the neighboring island of Tobago. The goodwill project was part of an annual effort by Martin George & Co. to “give back” while “giving a pack,” according to the firm’s founder and namesake.

The Williams Foundation has been a powerful force on the charitable front since its creation in 2015, providing food and household supplies to needy families in Tobago while also annually furnishing school supplies to underprivileged children on the island.

According to Williams, “We have a book bag drive held annually where book bags and school supplies are distributed to those who cannot afford them. Names of these students and their parents are received from primary and secondary schools in Tobago East and West. Book bags and school supplies are later distributed.”

Foundation officials said that the backpack project helps “level the academic playing field” for students in need, supplying them with some of the necessary tools to begin the school year on the right foot.

The backpacks contain pencils, folders, paper, scissors, Crayons, glue, and other classroom essentials. More importantly, said George, the backpack gift is symbolic of “opportunity” in education – and in life – that many children in Tobago wouldn’t otherwise receive.

Martin George & Co. was founded in 1992 and is a five-attorney law firm with offices in both Trinidad and Tobago. The firm, which also has eight administrative professionals, focuses its practice on the fields of family law, immigration law, property law, along with a number of sub-specialties.

Last spring, the Primerus firm turned its charitable attention to a “Mother’s Day Hamper Giveaway” to benefit single mothers on the island of Tobago, “where we purchased and prepared and distributed 100 hampers of food and household items and personal items and toiletries,” George said.

“What was so touching for us, were the stories and details that people shared as they accepted and received the hampers,” said George, admitting that he and his staff members were “moved to tears” by some of the tales.


Of special note, he said, was a story told by a single mother with 10 children

living in a two-bedroom shack on the island.

“She was so grateful for our donation and so were her children, that one of her toddlers asked innocently if I was ‘Santa Claus,’” George said with a broad smile.

“Other single mothers shed tears of joy and appreciation, and some went on social media to express their gratitude,” George related. “It showed us just how much of a need there is out there, and how much we who are in a privileged position have to do in order to seek to try to redress the imbalance.”

A month later, when Father’s Day rolled around, George was reminded of just how much his law firm’s outreach effort had meant to recipients.

“I was particularly touched and humbled when on Father’s Day so many of these single mothers sent me Father’s Day greetings and some even posted well-wishes on social media, thanking me again for all the assistance we offered them,” George indicated. “It is little miracles like this which make life worth living, and I hope that by sharing this experience, it can serve to motivate and inspire other Primerus members to become more involved with giving back to society and making that social contribution consistent with our duties under the Six Pillars of Primerus.” 

Martin George, pictured center in the back row, has been the force behind a series of community service projects involving his legal team in Trinidad and Tobago.



A special moment

Alabama law firm makes some 'Magic' for local boy

By Tom Kirvan



W

hen it came time to brighten the life of a 6-year-old Alabama

boy last summer, the brain-trust at the Montgomery law firm of Ball Ball Matthews & Novak, P.A. did more than mere wishful thinking.

Instead, the Primerus firm turned to a different craft – magic – to give a much-needed lift to Remington Waters, a local youngster undergoing treatment for neuroblastoma, the third most common form of childhood cancer.

Fittingly, for a law firm with “Ball” in its nameplate, the sport of baseball served as the magic potion for young Remington, a boy who worships the New York Yankees at the shrine of the national pastime.

“As a firm, we partnered with the Magic Moments Foundation in Alabama to fulfill a wish for Remington to see a Yankees’ game in person,” said attorney Chris Waller Jr., a partner in the civil defense firm that dates to the 1890s. “It was a dream-come-true moment for him and we were proud to help make it happen.”

But before that trip to the Bronx last fall, Remington had an earlier baseball engagement as a ball boy during a twin bill between the Montgomery Biscuits and the Biloxi Shuckers, the Double-A affiliates of the Tampa Bay Rays and Milwaukee Brewers, respectively.

In addition to his ball boy duties that day, Remington tossed out the ceremonial first pitch before the second game of the doubleheader. Moments later, he and his parents were informed that they would be headed to New York as guests of the Ball Ball law firm and Magic Moments.

Waller, now in his 18th year of practice with Ball Ball after graduating from

Cumberland School of Law at Samford University, was the catalyst for the firm’s involvement with Magic Moments.

“I’ve been a board member with the Magic Moments Foundation for seven years, and it has been so rewarding to help bring some light into the lives of kids who are dealing with life-threatening medical conditions,” said Waller, an alumnus of the University of Alabama. “We’re the only organization devoted exclusively to granting wishes for kids who live in Alabama.”

Each “Magic Moment” that the organization creates costs in the neighborhood of \$4,000 to \$5,000, according to Waller, the past chair of the River Region Council for Magic Moments.


“We typically fund 30 to 40 wishes a year,” said Waller, marveling at the generosity of those who have supported the program. “We have a big fund-raiser each year, where some of the recipients have appeared to tell their story of what they are going through.”



Chris Waller Jr.

Such stories, he said, “tug at the heart strings,” and help spur those attending to give with an open heart.

Waller and his wife, Jackie, are among those who give generously, always keeping in mind the blessings of their own family.

“As a parent of two children, I can only imagine what the parents of some of these kids who are sick are dealing with on a daily basis,” Waller said. “It’s really heart-breaking, which makes being involved in an organization like Magic Moments even more important.” 



Last July, Remington Waters was the guest of honor at a Montgomery Biscuits doubleheader, where he and his parents were treated to a special surprise meant to add some magic to his life.

Photo courtesy of WSFA Sports

ADLA President spearheads giving project across state

By Tom Kirvan



For a first-time endeavor, a four-pronged effort by the Alabama Defense Lawyers Association (ADLA) to benefit various community service agencies across the state rated as a runaway success thanks in large part to the leadership of longtime Ball Ball attorney Gerald Swann.

The current president of the ADLA, Swann initiated the “first-ever statewide community service project” for the organization last fall shortly after taking office, inspiring its 900 members to “give of themselves” for a series of worthy causes.

“Nothing like that had ever been done in the history of the organization,” said Swann, a 38-year member of the Ball Ball law firm. “Once I made the proposal, I was really delighted by the enthusiastic response we received.”

Swann, a Cumberland School of Law alum, said he was inspired to launch such a project after attending a Primerus event years ago in Boston.

“It was the very first Primerus Global Conference that I attended, and one of the components was to volunteer at a Boston area food bank,” Swann related. “That served as the initial spark to do something similar in Alabama.”

In October, Swann helped mobilize volunteers across the four districts of the ADLA, resulting in “significant donations being made to deserving organizations” around the state.

Collectively, ADLA members donated 1,688 boxes of Mac and Cheese for the Huntsville Rescue Mission, more than 100 snack bags for after-school programs in Birmingham, 350 articles of business attire for Our Sisters Closet in Mobile, and 1,300 diapers for Express-O of Love Diaper Bank in Montgomery.


“It was really wonderful to see how many people pitched in to help out,” said Swann, who earned his bachelor’s degree from the University of Alabama. “With the success we enjoyed in our first try, I’m hoping that this project will become an annual event for the ADLA.”

It seems a safe bet that it will, especially with a man of Swann’s background offering steady encouragement. After all, Swann began honing his leadership skills while he



Gerald Swann

was a walk-on defensive back for the Crimson Tide football team coached by the legendary Paul “Bear” Bryant, known as one of the greatest college coaches of all time.

“My senior year (1982) was his last year as coach,” Swann said of Bryant, who died of a heart attack in January 1983 not long after announcing his retirement. “Everyone who played for him certainly learned lessons from him.” 



Last fall, ADLA volunteers help pack snack bags for children attending after-school programs in Birmingham, Alabama. (inset photo)

**Our Sisters Closet in Mobile was the beneficiary of clothing donations rounded up by members of the ADLA. (left)
Photos courtesy of ADLA**

Looted art remains another unfortunate byproduct of Nazi tyranny during WWII

By Paul W.L. Russell



WW

orld War II is history. For more than 75 years. But not for everyone.

As an international art lawyer, I regularly deal with the consequences of the horrific actions of the Nazis and their accomplices. I cannot make up for the worst suffering of my clients. However, I can help with the restitution of stolen property to which precious memories are attached.

Restitution of looted art is, however, a difficult process. In many common law countries, including the Netherlands, the looting is long barred. Clients are thus legally empty-handed. Yet, there are still possibilities. In this article, I want to talk about three cases in which I was able to make a difference for my clients. These cases demonstrate that, at present, amends can still be made for at least some injustice from the past.

The fate of the Flersheims

The first two cases came from the grandchildren of Ernst and Gertrude Flersheim-von Maijer, a German Jewish couple that was murdered in the Bergen-

Belsen concentration camp in 1944, where Anne Frank also died. Ernst was a merchant in Frankfurt and an art collector and fled from Nazi Germany to the Netherlands in 1937. He had often been here on holiday and had also bought many artworks. Not until a year later, Gertrude also managed to escape. In the end, so in vain.

In the late 1990s their only two grandchildren contacted us. They had discovered that there were works of art hanging in Dutch museums that had been owned by their grandparents. It involved artworks by the Dutch artist Jan Toorop, a good friend of their grandparents who, around 1900, was one of the most important Dutch artists. Only Van Gogh and Piet Mondrian are better known from that time.

The two most significant cases involved valuable paintings. In the case of *Thames at London*, the Rotterdam Boijmans van Beuningen Museum refused restitution because it would not be looted art. The painting had been sold by Flersheim himself in the Netherlands in 1937. In the case of *Prayer Before the Meal*, it was not possible to reach a proper arrangement, partly because the Zeeuws Museum invoked good faith purchase. In 1980, long after World War II, the painting had been bought from a famous Dutch art dealer. The clients were thus empty-handed, because legally the claims were barred.

Washington Principles and Restitutions Committee

Internationally, however, the realization was already dawning that the postwar restitutions could not simply be put to an end, also because, in common law countries, these kind of claims are not time-barred. In 1998, this resulted in the Washington Principles with respect to Nazi-Confiscated Art.

The Netherlands adopted these principles and the state promised not to plead the statute of limitations for looted art any longer. Claims are being handled by a special body, the Restitutions Committee, which was established in 2001. Initially, it only handled claims against the state, but as from 2006, it was also given the authority to give a binding opinion in claims against private parties, including museums and lower authorities. They did have to indicate in advance, however, that they would accept the decision and not invoke that statute of limitations on the claim.

Finally, justice

The binding opinion procedure provided our clients with the chance they had been waiting for. They were therefore the first to take advantage of it. The two museums where the paintings hung agreed, partly under pressure from negative publicity about their first refusal. How did it end?



Paul W.L. Russell

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The main question in both cases was: Was the possession of the artworks involuntarily lost as a result of the Nazi regime? That was the case. *Prayer Before the Meal* had certainly been the property of the Flersheim family. It can even be seen in the wedding pictures of our clients' parents. It also was on the list of stolen property for which they had received Wiedergutmachung (reparations) from the German government. Moreover, a glance at the back of the painting revealed that it had been owned by a collaborator, who had been appointed as a Supreme Court judge during World War II. The museum might have made a good faith purchase, but research into the provenance had been particularly careless.

The situation in the case of *Thames at London* was more difficult. The painting had after all been sold in 1937, before the German occupation of the Netherlands in 1940. Nevertheless, the Restitutions Committee decided that this too was involuntary loss of possession. The painting had been smuggled to finance the departure of Flersheim's wife from Germany. And that is what the money was used for.

Interest of museums and public art collections

In 2007, the restitution policy was changed. Now, in binding opinions, the interests of museums and those of the public art stock were taken into account in deciding whether to return a looted artwork. I had objected to this right away because it was not in line with the Washington Principles. They indeed require to take the interests of the current owner into account. However, this is about the method of compensation, not about the question whether or not there should be restitution. And the interest of the public art stock can certainly not be found in the Principles. Unfortunately, this had no effect.

The policy change was a disaster for my clients in the third case. It concerned the heirs of the German Jewish industrialist and



art collector Richard Semmel. They claimed four paintings from four different museums. Only one of the four paintings was returned and that was because the museum did not attach importance to the artwork. However, the other three museums did and the decision was therefore in their favor. This included one painting from the private collection of Dirk Hannema, a museum director who had been a notorious Nazi collaborator.

In two of the cases, we went to the ordinary court because the Restitutions Committee had not done its job properly. One court proved us right, but that did not help the clients. In fact, the decision meant that the case had to be redone by the same Committee that had rejected the application. That, of course, did not stand a chance.

Back to the Washington Principles


Did this mean the end of the case? No.

In 2021, the restitution policy was changed again. Indeed, some of the Restitutions Committee's decisions had resulted in many negative reactions. Artworks had not been restituted, because the interest of the museum would outweigh restitution. In fact, museums were rewarded

for having been able to acquire important artworks in a dubious manner. This, of course, was in direct contradiction to the Washington Principles. The weighing of the interests therefore rightly disappeared from the Restitutions Committee's policy.

This policy change allows all cases in which the claim had been denied based on the weighing of interests to be resubmitted. Often this even was not necessary. The heirs of Semmel were restituted the painting from the Hannema collection without the need for proceedings. And new claims are now more likely to be successful.

Lessons for practice

These cases demonstrate how important it is to get a lawyer who is well informed about the latest legal developments and can respond to them. Without this knowledge, I could have never achieved that for my clients. And to art collectors this makes it clear once again that really thorough research into the provenance of the works must be done when purchasing. This does not only concern World War II, but also, for example, looted art from former colonies. And it also concerns terrorists who use the sale of antiquities as a means to get money. 



Russell Advocaten B.V.

For more than 75 years, Russell Advocaten B.V. in Amsterdam has been an internationally oriented corporate and commercial law firm that assists mainly entrepreneurs, company owners, employers and works councils. Russell Advocaten is located in the Netherlands, the “gateway to Europe.” For foreign clients, we are easily accessible both digitally and physically.

Russell Advocaten provides legal assistance in all issues that shareholders or boards of directors face. We specialize in guiding international entrepreneurs. From establishment to expansion of the company, we take care of all aspects of

your business: corporate, commercial, personnel, real estate, corporate immigration, and litigation. We pay special attention to the differences between Anglo-Saxon law and Dutch and European law. This way, you can avoid the issues you thought you had dealt with in a contract which turn out not to have been dealt with according to Dutch law.

In addition to our general practice, we have some special niches, such as art and law, charities, and embassies and consulates. The quality of our services has been approved by the European Legal 500 since 2005.



Can an e-mail be a contract? It's a question of fact and law

By J. Chase Bryan

In today's environment, most business communication occurs by e-mail or text message. In the context of a contract dispute, whether an e-mail can constitute a signed writing giving rise to a contractual obligation is a tricky question. In short, there are situations where an e-mail can constitute a signed writing under the statute of frauds and can bind a person or entity to a contract.

How is this possible?

Many states have adopted the Uniform Electronic Transactions Act or UETA. For example, in Mississippi, the UETA applies "to electronic records and electronic signatures relating to a transaction, including transactions governed by Article 2 of the Uniform Commercial Code (Mississippi Code Section 75-2-101 to -725 (Rev. 2016)). Miss. Code Ann. § 75-12-5(a)(2) (Rev. 2016). The UETA states also that it applies only to transactions between parties each of which has agreed to conduct transactions by electronic means." Miss. Code Ann. § 75-12-9(b) (Rev. 2016)...[w]hether the parties agree to conduct a transaction by electronic means is determined from the context and surrounding circumstances, including parties' conduct. Miss. Code Ann. § 75-12-9(b)." *Parrish Transport LLC v. Jordan Carriers, Inc.* 327 So. 3d 45, 52 (Miss 2021).

Courts looking at this issue have determined that parties may be deemed to have agreed to a contract by electronic means through an ongoing participation in electronic transfers. See *Dalos v. Novaheadinc*, No. 1 CA-CV 07-0459, 2008 WL 4182996, at *4 (Ariz. Ct. App. Mar. 18, 2008).

Courts looking at the issue of whether an e-mail can constitute an electronic record under UETA have determined that an e-mail constitutes an electronic record. See e.g. *Parish Transport LLC*, 327 So. 3rd at 53-55.

The next step is for the court to determine whether the electronic record satisfies the statute of frauds. By way of example, the Mississippi statute of frauds requires a writing to be sufficient to indicate that a contract for sale has been made between the parties; that the writing must be signed by the party against whom enforcement is sought and the writing must specify a quantity. The UETA allows an electronic record or signature to satisfy the law. See Miss. code and 75-12-13 (c) – (d).


When does an e-mail signature constitute a signed writing? The comment to the federal UETA provides some guidance and states that: "The idea of a signature is broad and not specifically defined. Whether any particular record is "signed" is a question of fact. Proof of that fact must be made under other applicable law. This Act simply assures that the signature may be accomplished through electronic means. No specific technology need be used in order to create a valid signature.... It also may be shown that the requisite intent was not present and accordingly

the symbol, sound or process did not amount to a signature."

Courts across United States recognize that "a signature block at the bottom of an e-mail has come to represent what a handwritten signature once represented: a means of identifying the sender, signifying he or she adopts or stands by the contents of the communication..." See *Williamson v. Bank of New York Mellon*, 947 F. Supp 2d 704, 711 (N.D. Tex 2013).

What does this all mean for litigation over contracts involving e-mails? In most jurisdictions, the question of whether a contract exists involves both questions of fact and questions of law. Questions regarding the construction of contracts typically are questions of law that a court decides. However, in the event of an ambiguity or conflicting evidence, there will be a fact question presented to a jury.

For example, where there are e-mails among the parties subsequent to the execution of a written contract that vary the terms of the contract, there very well may be a question of fact that goes to a jury as opposed to be resolved by the court on a motion based on the agreement executed before the e-mail exchanges.

E-mail has changed the way business is done and it can change the way cases are litigated when there are extensive e-mail exchanges about the terms of a deal. Be careful and consider using an e-mail signature block that disclaims that any e-mail is not intended to create a binding contract. 



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Booze-to-Go

The background of the page is a photograph of three plastic cups filled with different colored beverages. From left to right, the cups contain orange, red, and yellow liquids. In the foreground, several ice cubes are scattered on a blue surface. The overall lighting is bright and cool, with a blue background.

The changing
landscape of
takeaway alcoholic
beverages in the
United States

By Paige Hall

S

ince the COVID-19 pandemic, multiple states have approved new legislation

approving restaurants and bars to sell “to-go” cocktails and alcoholic beverages.

Prior to the pandemic, most states prohibited the sale of to-go alcoholic beverages and cocktails by bars and restaurants; however, since the pandemic, many jurisdictions have approved the to-go sale of beer and liquor by these establishments on a permanent basis. According to Mike Whatley, vice president of the National Restaurant Association, to-go alcoholic beverage sales were of paramount importance to restaurant and bar survival during the pandemic as alcohol sales generally produce one of the highest margins in the industry. Since 2020, some 14 states and the District of Columbia have approved the sale of to-go alcoholic beverages on a permanent basis.

With the enactment of new legislation regarding the sale of alcoholic beverages, restaurants and bars should be aware of the local requirements of the legislation and how the laws of the individual

jurisdiction may impact the to-go sale of wine, beer, and liquor, including the following potential issues that may be faced in the jurisdiction:

Licensing Requirements

Many of the new statutes enacted require leasing and licensure for restaurants and bars to sell alcoholic beverages to-go. For example, in Arizona, bars and restaurants will need to apply for a lease and pay a fee in order to offer alcoholic beverages to-go. Some jurisdictions, such as Nebraska and Wisconsin, have chosen to allow the sale of alcoholic beverages to patrons on a to-go basis if the restaurant or bar already holds a certain type of liquor license, and merely requires the licensee to provide notice of the to-go beverages at the time of annual renewal of the license. Restaurants and bars wishing to offer takeout alcohol will need to familiarize themselves with the licensing requirements of its jurisdiction and determine whether any new or additional licenses are necessary prior to offering this service.

Quotas

Some of the legislation passed to permit sale of wine, beer and cocktails for off-premises consumption has statutory language enacting a quota on the number of licenses issued to permit such sales.

For example, Montana House Bill 226 has limited the number of permits that will issue per geographic area.

Availability of Delivery: Restaurants and bars will need to review the legislation to determine whether the legislation recently passed in their state has authorized the ability to deliver beer, wine, and cocktails, as this differs from jurisdiction to jurisdiction. For example, Arizona House Bill 2773 and West Virginia House Bill 2025 permit restaurants with appropriate licensure and leasing agreements to deliver beer, wine, and cocktails and permit them to utilize appropriate registered alcohol delivery contractors. Meanwhile, Montana House Bill 226 and Wisconsin Assembly Bill 32 only authorize curbside pickup of alcoholic beverages to be consumed off-premises, do not intend to authorize delivery to residences or other businesses. Some state legislation, such as Arkansas Act 703, have limitations prohibiting the use of third-party delivery services making delivery of alcoholic beverages. Restaurants and bars will want to check the language of the legislation to ensure their to-go beer, wine, and cocktail delivery is in compliance with local legislation.



Paige Hall

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Restrictions on Sales to Individuals in Vehicles

Some jurisdictions may have restrictions on sales to patrons in vehicles that the establishments should be aware of before commencing to-go sales of alcoholic beverages. In Nebraska Legislative Bill 274, alcoholic beverages can only be sold to patrons in vehicles if the alcoholic beverage is sold with food, if the motor vehicle is in park, if the liquor is placed in the trunk of the vehicle or in an area behind the last upright seat. Similar restrictions are contained in Oklahoma House Bill 2122 and Texas House Bill 1024. Iowa House File 2540 and Ohio House Bill 669 create a criminal penalty for customers who are consuming mixed drinks or cocktails that are not in compliance with passenger area of motor vehicle rules in the bill.

Containers: Some jurisdictions have placed restrictions on what type of containers may be used in the sale of to-go alcoholic beverages. In Kansas House Bill 2137, liquor retailers and restaurants must sell alcohol in either unopened original containers or in refillable and sealable containers that discourage tampering. Oklahoma House Bill 2122 and Texas House Bill 1024 have similar restrictions, requiring alcoholic beverages to be contained in “rigid” and “tamper-evident” containers. Iowa expressly prohibits the sale of to-go alcoholic beverages in paper or plastic cups or containers outfitted with a straw or sipping hole. Restaurants and bars seeking to expand into to-go liquor sales should confirm if their location requires any specific containers for to-go offerings that must be utilized.

What Type of Alcohol Can Be Sold

Under New Laws: Restaurants and bars looking to develop to-go liquor sales should also check with the jurisdiction’s local rules regarding whether there are limitations on what type of alcohol can be sold. For example, in Arizona, restaurants and bars must possess a specific type of lease in order to sell full bottles of spirits for customers to take home.

Food Purchases: Restaurants should also be aware if newly enacted legislation requires that food be sold along with alcoholic beverages pursuant to local state statutes. Some have concerns that the enactment of to-go legislation could lead to excess drinking, and a required simultaneous food purchase could limit the intoxicating effects. For example, the Texas, Arizona, Arkansas, and Kentucky statutes require food to be sold with to-go alcohol sales.

Number of Drinks Purchased:


Restaurants and bars also will want to check whether their jurisdiction has a limitation on the number of alcoholic beverages that can be purchased per order. For example, Kentucky State Bill 67 limits the sales of liquor per order to a number that “a reasonable person would purchase with a meal.” Ohio House Bill 669 has a three-drink limit per meal sold, and Georgia Senate Bill 236 permits the sale of two drinks per meal sold containing no more than 3 ounces of alcohol each.

Timing of Alcohol Sales: Some new legislation places restrictions on the timing of the sale of alcohol that restaurants and bars will want to familiarize themselves with. For example, West Virginia House Bill 2025 allows the sale of liquor between 2 a.m. and 6 a.m. Florida Senate Bill 148 cuts off the sale of alcohol either when

the restaurant’s food or bar service ends for the day or 12 a.m., whichever comes first.

Underage Alcohol Sales: Some organizations also have voiced concerns about the ability for underage patrons to access alcohol through to-go sales. As such, some legislation has placed certain safeguards to prevent the sale of alcohol to minors. For example, Iowa House File 2540 requires presentation of a valid driver’s license upon the pick up or delivery of alcoholic beverages and creates civil and criminal penalties for furnishing alcoholic beverages to underage patrons.

Dram Shop Liability: Restaurants and bars also will want to be aware of its jurisdiction’s dram shop liability law as it considers exploring the use of to-go alcoholic beverages. As the alcoholic beverages are being taken to be consumed off premises, this could increase the purveyor’s potential liability for dram shop litigation. Restaurants and bars will want to ensure they are up to date on all dram shop liability laws and are properly insured in the event of a dram shop litigation.

The passage of to-go alcohol sales legislation requires all vendors to be aware of the specific requirements and liabilities posed by your individual jurisdiction, as the legislation varies greatly from jurisdiction to jurisdiction. Local legal counsel should be consulted with to ensure that retail and restaurant establishments follow the various regulatory and safety requirements prescribed by legislation and to consider any additional liabilities or exposure that may be experienced in the establishment’s jurisdiction. 

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