

# DULY NOTED

## Pfizer IP lawyer joins Miller Canfield, Kalamazoo

The law firm of Miller Canfield announced in August that IP lawyer John H. Engelmann, Ph.D. has joined the firm as senior counsel in the Intellectual Property Group. He brings over 30 years of experience as a lawyer for global pharmaceutical and chemical companies. Engelmann will reside in the firm's Kalamazoo office.

Engelmann joins Miller Canfield from Pfizer, Inc. in Kalamazoo, where he was senior corporate counsel of the intellectual property practice, foreign and US patent procurement, and transactional matters. He specializes in patents, trademarks, FDA, regulatory law, and contracts. He has extensive experience in negotiating with regulatory agencies and counseling clients on patent strategies.

Prior to Pfizer, he worked as IP and patent counsel for other major pharmaceutical companies.

Engelmann is a member of the Connecticut Bar Association and is admitted to practice before the U.S. Patent and Trademark Office. He received his J.D. and a Ph.D. in Chemistry from the University of Illinois. His post-doctorate fellowship is from the State University of New York and his B.S. from the University of Wisconsin-Milwaukee.



# Experience speaks at Drunk Driving Defense educational seminar

by Cynthia Price  
Legal News

Role play and a touch of righteous indignation enlivened a recent presentation on how to approach blood alcohol testing by a couple of seasoned Grand Rapids lawyers.

Mike Kelly and Keary Sawyer led off a session of the Institute of Continuing Legal Education (ICLE) in Grand Rapids Sept. 11.

Kelly has been presenting for ICLE for over a decade, and he reached out to Sawyer a few years ago to round out a dynamic duo for presentations on how to mount an effective defense for those charged with drunk driving offenses.

In a later interview, the two lawyers said that they have had a natural affinity ever since they met, overcoming the tendency to be competitive. Sawyer has been practicing in the area for over 30 years, and Kelly for over 40. Sawyer says, "I have tons of respect for him," and Kelly returns that admiration. The banter between them is full of affectionate teasing.

That natural affinity was evident at the ICLE presentation. The two attorneys say they prepared months in advance for their specific topic, "Cross Examination of the Forensic Scientist in a Drunk Driving Case."

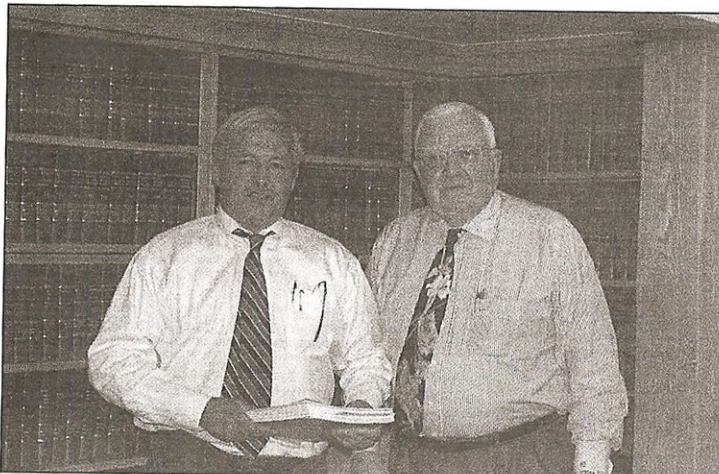
Therein lies the righteous indignation. Sawyer tried to get more information about the state's blood alcohol content (BAC) testing, but the attempt was met with obstruction and outright refusals.

Kelly was sent information that he realized was incomplete, and had to submit a FOIA request to get more.

Keary and Sawyer find this unacceptable, feeling that there should be transparency and accountability to the public.

Some of what they were able to find out was disturbing, as they covered in their ICLE presentation. The emphasized that the uncertainty with the testing does, however, offer abundant opportunities for shaking the prosecution's case.

For example, the process used to



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Keary Sawyer (left) of Sawyer Law Offices.Com P.C. joins Michael Kelly in the library of Kelly Law Offices on Fulton in Grand Rapids.

mark the incoming containers at the testing lab is open to error. A lab clerk receives the mailed tests and stamps them with an ID code, stamping the master key at the same time. Five seconds' worth of inattention could result in misidentification.

The tests are auto-loaded into the unit which determines the exact BAC, and this is often done at night without close supervision. According to Sawyer, the scientific method used is to introduce a reactive chemical into the blood sample, heat it and then measure the alcohol content of the gas that is generated.

Further, the people who are doing these tests generally have no scientific or medical background. Sawyer advised that it is important to subpoena the lab technician and get him or her on the stand.

As part of the Sept. 11 seminar, ICLE gave each participant a large bound volume of information and updates. Included in this were

excerpts from the training manual for these lab techs. Sawyer and Kelly, however, warned that it is inadvisable to get into the process in too much depth, because that might make the lab tech look like more of an expert than is justified — though it is a good idea for attorneys to familiarize themselves with how it works.

Sawyer said that there is an error factor of .01, which is a very wide margin when you consider that a .08 BACK is considered driving under the influence. He suggested retaining a toxicologist in cases where the results are close.

There are many issues with the chain of evidence, some of which may even result in disallowing the information from the BAC tests.

Another key issue is the length of time the drawn blood is stored, and the method of storage, in particular in Michigan where the policy is to seal just the box and not the vials. This

could allow for decomposition, which through the action of sugars in the blood would raise the BAC.

Sawyer and Kelly role-played the parts of a cross-examining defense lawyer and a lab technician to indicate some of the questions that should be asked, and what the typical answers are.

Sawyer comments, "Obviously, nobody wants to let someone who is a chronic drunk out there on the roads." Kelly hands out a small card which tells you how to calculate your approximate BAC based on weight, the number of drinks, and the time that has passed since consumption. At the bottom it reads: "WARNING - If your blood alcohol is .08 or more, you are legally intoxicated - DO NOT DRIVE."

While both Kelly and Sawyer practice in other areas along with DUI defense, both are sought after as

DUI continues page 2

# Company's generosity gives drug court program a boost

DUI from page 1

commentators for broadcast news stories about drunk driving.

Most of the remainder of the ICLE seminar delved into the consequences of a drunk driving conviction on those with different professional or legal status, David H. Paruch of Troy talked about immigrants. Michael L. Steinberg had earlier introduced as having a lot of expertise in the field; he was able to publicize a text message he received during the seminar about a

Court of Appeals decision on the constitutionality of the Minor in Possession statute of the city of Troy. He talked about the effect on medical professionals, and advised asking physicians to enroll in rehabilitation immediately on being charged as a defensive measure.

Arthur R. Przbylowicz, attorney for the Michigan Education Association talked about what happens to teachers, and finally attorney Thomas M. Loeb (Farmington Hills) and

Cynthia Bullington of the Michigan Attorney Grievance Commission discussed what happens to lawyers.

Finally, John Talpos of Talpos & Arnold PC in Troy gave updates to drunk driving law, including U.S. Supreme Court and Michigan cases as well as statutory changes. The recent addition of a "Superdrunk" category to the Michigan Public Acts covering Operating While Intoxicated requires increased penalties for operating with a BAC of .17 or more, effective

Oct. 31, 2010.

The overall advice for lawyers wanting to increase their skills in drunk driving defense is to join the National College for DUI Defense (www.ncdd.com) and the Criminal Defense Association of Michigan (www.cdamonline.com), organizations whose electronic listservs alone are well worth the cost of membership.

There will be a repeat of this ICLE seminar on Oct. 14 at The Inn at St. John's in Plymouth.

ART VAN from page 1

The Van Elslanders hosted events in Warren, Flint, Grand Rapids, Traverse City and Lansing during a three-day blitz in early August, announcing the organizations that received the grants and "asking others to help support these important Michigan-based non-profits that focus on children, health and human services programs." The selected charities received grants ranging from \$5,000 to \$50,000 each as part of the "Art Van Million Dollar Charity Challenge." The "Challenge" is part of the year-long celebration of Art Van Furniture's 50th anniversary, which will feature a special appearance by super model Cindy Crawford on October 1 at a gala event benefiting Henry Ford Health System. Over its 50-year history, Art Van has grown to 30 stores, employing a work force of more than 2,500.

"If you're fortunate enough to be as successful as we have been, then I believe it is your responsibility to give back," said Art Van Elslander. "...We designed these grants as challenge gifts in order to encourage others to donate and maximize fund-raising opportunities."

Receiving Art Van grants in the West Michigan area were: Benjamin's Hope (in Holland); Catholic Family Services; Community Advocates for Persons with Developmental Disabilities; Hospice of Michigan; Hospice of Muskegon County, Inc. (dba Harbor Hospice); Kids Food Basket; and Mecosta County Senior Center.

Chief Judge Potts paid special tribute to Van Elslander as a "wonderful supporter of the community," noting that the Child Abuse and Neglect Council of Oakland County also was

among the local beneficiaries. She said that Bloomfield Hills attorney Alan Ackerman, secretary of The RESTORE Foundation board, was "instrumental to RESTORE's ability to receive this donation."

Ackerman, long recognized as one of the top eminent domain attorneys in Michigan, said he has known Van Elslander for years, both in business and social settings.

"Once you know him, the word 'friendship' takes top priority," said Ackerman of Elslander, who serves as chairman of the company that he founded in 1959.

Ackerman said he continues to be moved by "Art's generosity," as he "does so much for the community," and now, The RESTORE Foundation in particular.

"The donation will help the drug courts, and our pro-

grams are fantastic and truly required," said Ackerman.

The Oakland County drug court dates to 2001 and was launched with federal funds that served as seed money to help local officials get the program up and running, according to Chief Judge Potts. The program is designed to curb the use and abuse of drugs and alcohol, and to reduce recidivism in drug-related activity. It is widely viewed as a viable and less costly alternative to incarceration, and focuses on treating drug users and transforming them into productive members of society, she said.

Those interested in making a financial contribution to the program should send checks to The RESTORE Foundation, 5413 Pleasant Lake Drive, West Bloomfield, MI 48322. For more information on the Foundation, call 248-258-2333.

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