COLUMBUS BAR

Lawyers QUARTERLY

SUMMER 2008

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CBA
COLUMBUS BAR ASSOCIATION

The Bard *and* The Bar

We are at risk of losing that special spirit – the esprit de corps – that makes ours a unique profession.

By Kathleen McManus Trafford

You all know the quote from Henry VI – "The first thing we do let's kill all the lawyers" – and have endured the countless jokes and jabs it sparks. The context of the quote is an uprising against the King in 1450, the Cade Rebellion. The rebel leader is making promises of the riches that will come from his ascendancy as king, and his follower, Dick the Butcher, utters the statement as a rallying cry to speed the rebellion forward. Thus the seemingly pejorative quote is a compliment. What the Butcher was saying is that lawyers defend the rule of law and, thus, stand in the way of anarchy.

Shakespeare's perception that lawyers play a critical role in maintaining the social and political order has been proven true throughout the next four centuries, as evidenced by the dominant, disproportionate role lawyers have played in leading democratic governments, civil justice causes, and the community and cultural organizations that enrich our lives. The perception is reality when lawyers step forward to defend Guantanamo detainees, represent Katrina victims or challenge the incarceration for life of thirteen and fourteen-year-old children. We saw the perception as reality this spring when hundreds of Ohio lawyers offered to volunteer their time to help those swept up in the foreclosure crisis and when our own Scott Weisman resolutely defended pro bono an openly hostile and offensive client. Lawyers continue to sew and mend the seams that hold society together. The Bard would be proud of us, and we should be proud of ourselves.

Though the Butcher's proclamation is by far the best known, Shakespeare often invoked the role of lawyers to make a point. He did so in Taming of the Shrew, giving us a statement that well captures the spirit of our profession and is my personal favorite. In Act 1, Scene 2, Tranio, one of the conniving rival suitors for Kate's younger sister, Bianca, proposes that he and his rival should compete openly when in their mistress's presence but otherwise remain cordial. He exhorts his rival Hortensio that they should "do as adversaries do in law — strive mightily, but eat and drink as friends." This is still sound advice for lawyers to act upon today.

Our profession is unique. Trial lawyers are expected to pit their skills against each other to persuade a jury or judge to their client's position. Transactional lawyers are supposed to match wits across the conference room table. The prosecutor is encouraged to convict, while the public defender strives to acquit. One lobbyist is hired to pass a bill, another to defeat it. We are an adversarial profession, yet we are expected to be professional adversaries. We are supposed to strive mightily for our clients, but to do so in a civil, respectful way. What Tranio proposed to Hortensio is now the cornerstone of our professional code – advocate zealously, but with civility towards each other.

And there is no better way to act upon Tranio's advice to "eat and drink as friends" then to get involved in your local bar association. The Columbus Bar offers innumerable opportunities to come together to celebrate our chosen profession, the good that it does, and the camaraderie it fosters. The annual gala for the Columbus Bar Foundation provides an evening of relaxed friendship and a chance to show off the programs and projects made possible by the generosity of our colleagues. The awards luncheon gives us a chance to recognize our friends who have used their talents in some special way for the betterment of the profession or the community. The annual meeting is a good place to break bread with last week's adversary or to meet lawyers outside your immediate circle. Many events and projects – the Rock n' Bowl, the bench-bar reception, and anything done by the new (young) lawyers committee – are coupled with good food, drink and friendship.

The Bar equally supports the "strive mightily" component of Tranio's exhortation. Its many diverse continuing legal education seminars will hone your competency and skill as an adversary. In the committee meetings you can learn and shape the key issues affecting your practice area. Through its many pro bono initiatives, the Columbus Bar can help you put your unique talents to use for those who have no other advocate.

The excuse I hear most often for why a lawyer is not a member or is not more involved in the Bar is time, as in "not enough time." No doubt we are all busy, with many demands on our time. Over the last two decades the practice of law has gone into warp speed. We are doing more, and doing it faster. We no longer mail briefs; we serve and file electronically. We don't write letters; we send emails. We have few real conversations. We listen to recorded messages or text each other with our Blackberries and IPhones. Two decades ago, the practice of law in Columbus was largely local. Now it is national, even international. Technology has dramatically changed the way we practice, in many ways for the better. But, it has had an unfortunate consequence. It has reduced the necessity (I say opportunity) for personal interaction among our peers. We are at risk of losing that special spirit – the esprit de corps – that makes ours a unique profession. We at the Columbus Bar are committed to striving mightily to see that does not happen. But we need your participation. If you are not a member, please consider joining or renewing your membership. If you are a member, reach out to others who are not. Encourage a colleague to attend a committee meeting with you. Bring someone you know to a CLE program. Celebrate with us at the annual meeting, the awards luncheon or the Foundation gala, and bring a friend. Call me and ask me how you can get more involved.

ktrafford@porterwright.com

Kathleen McManus Trafford, Porter Wright Morris & Arthur

Let Us Help You Be The One

ColumbusLawyerFinder.com

By Alex Lagusch

The Columbus Bar and its wholly owned subsidiary, Columbus Bar Services, are pleased to introduce *ColumbusLawyerFinder.com*. Doesn't it sound like the kind of site you would visit to find an attorney?

Well, maybe not you, but what if you weren't an attorney? Seems intuitive doesn't it? But wait, I asked where you would go to find an ATTORNEY and the site deals with lawyers. After hundreds of thousands of calls to our Lawyer Referral Service over the past 63 years we've learned non-lawyers are looking for lawyers, not attorneys. However, *ColumbusLawyerFinder.com* is uniquely positioned to give them either or both.

Even before *ColumbusLawyerFinder.com* came into being though, it was already helping the public find their way to legal help. OK, I'll stop playing games - the help was being provided under the auspices of Liamlaw.com. Sound familiar? Liam, even with its name, has attracted 23,111 unique visitors who visited the site 36,523 times and viewed 222,103 pages, generating 2,328,413 hits.

After less than a year of operation, we concluded that the Liam name was a little too obscure. The public was finding legal help, but members were resisting joining the service because they felt it had to be more intuitive. We listened and hired KnowBase Networks out of Cleveland to come up with a better name. We found - *ColumbusLawyerFinder.com*. Just so you know, close runners up included: ColumbusLawyerLocator.com and ColumbusAttorneyFinder.com.

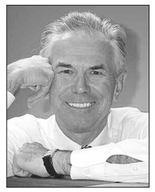
With the name change has come yet another major change, a lower cost option for participants. *ColumbusLawyerFinder.com* will only require a commitment of 3 months at a monthly charge of $150 per month – a shorter contract at a lower price. New attorney subscribers to the site will get an additional 2 months free! Come on – what a deal!

One "FAQ" is "Does *ColumbusLawyerFinder.com* (and/or Liam) require a sharing of the fees generated from inquiries to participating attorneys?" It does not. The only fee paid is the $150 per month.

We encourage you to shop *ColumbusLawyerFinder.com* against our competition. What you will find is that each ColumbusLawyerFinder subscription provides five pages of profile content, in two different areas of law, and placement at the top of the list of attorney names and in the legal tool kit pages on a regular basis, with no extra fees. Most other online advertising services would want you to pay handsomely to be at the top of their lists with a bolded name, a headshot, and a link to your firm website, not to mention the additional fees they would charge to appear in a second area of law, or to include significant cases, law school, or legal committee work. And, none of our competition has the prestige of being affiliated with a bar association with 139 years of local legal presence in Columbus, a factor that our local consumer focus groups told us was an important mark of credibility when they were making an attorney hiring decision.

ColumbusLawyerFinder.com was conceived and developed exclusively by the Columbus Bar Association and Columbus Bar Services. It has been modified because of member suggestions and observations. It will continue to be a member driven service. If you are on another Internet service, try us and compare the results. If you haven't ventured into web marketing, this is a fairly painless to stick your toe in the water. Our ColumbusLawyerFinder administrator, Anne Leonard Palmer, will help you enroll and build your site. If you are downtown, stop by and talk to her in person. Take a look at our site. Look at your colleagues who are current participants and give them a call to get their reaction.

alex@cbalaw.org



Alex Lagusch, Columbus Bar Executive Director

Kathleen Trafford, The Joyful Professional

Kathleen is that rarest of species, the joyful professional, the lawyer who loves the work, not just the win - although there have been plenty of big wins along the way.

By Patty Wise

One Monday morning not too long ago, a colleague passed the incoming President of the Columbus Bar, Kathleen Trafford, in the hallway at work.

"How was your weekend?" the colleague asked.

"I had a great weekend!" Kathleen enthusiastically replied.

"Oh, what did you do?"

"I was here working both days," Kathleen said.

The response garnered an odd look, for sure. But for Kathleen, it would have been odd to reply any other way. "I got a call late Friday about a possible case," she explained. "I spent Saturday and Sunday at the office researching the issues and preparing for a Monday 'file or no-file' meeting. The issues were fascinating, the strategy complex. Of course I loved it. That's what I do for a living!"

Kathleen is that rarest of species, the joyful professional, the lawyer who loves the work, not just the win - although there have been plenty of big wins along the way.

A partner at Porter Wright Morris & Arthur, Kathleen is a veteran of intense, high profile cases, from the Ohio savings and loan crisis in the '80s, to a successful U.S. Supreme Court argument on behalf of the Ohio Civil Rights Commission (both when she was an attorney with the Ohio Attorney General's office) to representing the Taft administration during the "Coingate" scandal. On the other side of the political aisle, Election Day 2004, she represented the Democratic National Committee fighting to keep the polls open and the long lines moving. Not to mention Wendell Humphrey, the prison guard who refused to cut his hair for religious religions, against state correctional department regulations – a right Kathleen fought for all the up to the Ohio Supreme Court pro bono – and won in 2000.

Whoever said governmental regulation and constitutional law, Kathleen's main practice areas, aren't interesting? In fact, if there is one thing that has propelled Kathleen's exceptional legal career – besides being whip smart and a crack study, of course – it is her uncanny ability to follow her nose when she gets interested in something, wherever it may take her.

Consider, for example, her path to the legal profession, a scenic route if ever there was one. She was a college junior majoring in sociology at Nazareth College, a small Catholic women's college in upstate New York, where she grew up. An ace in math, she'd wanted to be a civil engineer, but was told "it was not a nice profession for a lady." Later that year, while waiting at her boyfriend's fraternity house, Kathleen flipped through the sort of "gentleman's magazine" you might find at a fraternity house, and became fascinated by an in-depth interview with the world famous urban planner, Herbert Gans. A light went on, and Kathleen saw her future - part of it, anyway.

At the time she could find only three urban planning masters programs in the country and won a full ride scholarship to one of them. So in 1970, a few months after the Kent State shootings, Kathleen arrived sight unseen at Kent State University. A year later she earned her Master's degree and got a job as an urban planner in the Akron area working for the Tricounty Regional Planning Committee.

"It was great! I loved it and I assumed I would always be an urban planner," she says. After a couple of years, Kathleen noticed that the decision-makers – elected or appointed city officials – were giving more weight to lawyers' advice than the urban planner's recommendations. "I thought having a law degree would give me more credibility with city councilor-types, so I started night law school in Akron to become a more effective urban planner," she says.

She transferred to Capital University Law School in Columbus, paying her way as a legal intern in the Ohio Attorney General's office during the day. "I still had no intention of practicing law, and I always said I would never be a trial attorney—but one thing lead to another, and I fell in love with it," Kathleen says. She graduated cum laude in 1979, and began her legal career in the Opinions section at the AG's office, advising local governments and state agencies on their duties, with the occasional court case thrown in.

The cases got bigger as Kathleen rose through the ranks to became Deputy Chief Counsel, taking assignments from various sections in the AG's office. She was there the day the phone call came in from the Ohio Department of Commerce regarding the savings and loan crisis – the "we have a problem" call that started it all. She ultimately had primary responsibility for defending the state in the litigation resulting from the bailout. "People forget that crisis ended up with a relatively happy ending," she says. "The state of Ohio got all its money back, more than $100 million. From a lawyer's point of view, it was great work. It was everyday, all day, heady stuff."

As that litigation wound down, Kathleen decided it was time for a change. "The experience at the Attorney General's office was great but it was time go to private practice," she said. She'd also met and married Robert "Buzz" Trafford, an attorney at Porter Wright who had headed up the savings and loans cases as outside counsel.

"We discussed it and decided I should join the same firm, because if I didn't, we wouldn't be able to talk to each other about any of our cases," Kathleen said. "At that time (1988) Porter Wright had a nepotism rule against hiring relatives," Kathleen laughs, "but fortunately it didn't cover wives, because that possibility would have been unthinkable when the policy was written way back when." Buzz brought two young children into the marriage, "the best part of the deal, I told him," Kathleen jokes, and a high-powered family was born.

A Columbus Bar member since the late '80s, Kathleen increased her involvement in the past decade, serving on or chairing several committees and task forces, including the Discipline and Grievance committee, the Task Force on Domestic Violence, the Judicial Campaign Advertising Committee, to name a few. "I really like the neighborhood bar association," Kathleen says. "What we do at the Columbus Bar is just directly related to our lives and businesses as lawyers in this community."

As President, Kathleen is particularly interested in what she calls stewardship issues, and will be deeply involved in the long range planning activities the Columbus Bar will undergo this year. "Right now, one of my jobs is to take care of the firm so it is here for the next generation. The Columbus Bar does this on a macro scale, watching out for our profession in central Ohio to make sure it grows and thrives."

As Kathleen sees it, that includes understanding the different needs of young lawyers who are entering the profession now, creating solutions for the economic challenges facing solo, small, mid and even large firm practitioners, sorting out the rewards and risks of big picture forces like, say, globalization, that are affecting the profession.

Take the "green" initiative, for example. Kathleen is passionate about helping the Columbus Bar become a leader in reshaping the way law firms, and businesses in general, use resources. With the American Bar Association's green initiative as a starting point, Kathleen will lead a major rollout of ideas and implementation in the coming months.

"Look at the tall buildings in downtown Columbus," she says. "That's where the lawyers are. If we can get those lawyers working on green initiatives, we can make an honest difference in the life of this City." The simple step of committing to two-sided printouts, she says, writ large across the entire legal community, can make a huge difference. (Think of that 50 page brief, 10 drafts down. Two-sided printouts cut the paper usage in half.)

As busy as she is, you might say Kathleen is leading a two-sided life, getting the most she can out of every aspect of her life at work and at home. Over the years there has been little extra time for hobbies, but now that the children are grown—Andy will be 23 and Sarah will be 26. Kathleen has taken to experimenting in the kitchen. Every month she reads "Bon Appetit" and makes two new recipes, first for herself and husband Buzz, then if successful, for entertaining friends.

She loves the Columbus library system, and admits to paying the occasional fine on the crime fiction books she enjoys reading on the beach. "I don't mind. I consider it a 'green' expense – cheaper than buying a book. And it is money well spent," she says.

For Kathleen, it's always about the joy, whether she is working weekends, paying library fines, and this year, leading the Columbus Bar. "If you love what you do, it should show," she says. It does!

Patty Wise

What does one do in no-man's land?

PROPOSED AMENDMENTS TO SUPREME COURT RULES FOR THE GOVERNMENT OF THE BAR OF OHIO, RULE V § 8 (G)(1) – EMPLOYMENT OF A DISQUALIFIED OR SUSPENDED ATTORNEY

By A. Alysha Clous

Suspension . . . purgatory, no-man's land, time-out, DMZ, court imposed sabbatical . . . call it what you will, but the Supreme Court of Ohio suspends dozens of attorneys from the practice of law each year for violations for our Rules of Professional Conduct. The suspension can be as short as a few months, or could continue indefinitely if the attorney does not comply with the reinstatement requirements.

Understandably, most attorneys want to maintain contact with the legal community and their clients, and make a living, during a suspension. Often, there are monetary reimbursement requirements which are prerequisites to reinstatement. Even more understandably though, the Supreme Court is concerned that a suspended (and thus unlicensed) lawyer may continue practicing and/or continue the unethical behavior which led to the discipline in the first place.

To help monitor suspended attorneys, the Supreme Court has long required that, if a suspended attorney is employed by another attorney, the employing attorney must register the employment with the Office of Disciplinary Counsel. The registration specifically affirms that the suspended attorney is not practicing law, and that the employing attorney will supervise and be responsible for the suspended attorney's work. Thus, a suspended attorney can work, essentially in the role of a paralegal, under the supervision of the employing attorney.

An amendment has been proposed which expands the Rule to include, in addition to suspended attorneys, those who are disbarred and those who resign with discipline pending. Attorneys in these last two categories are titled as "Disqualified." Under the proposed rule, a suspended or disqualified attorney is not allowed to have any direct client contact, handle client funds, and further specifies the requirements of registration form which must be filed with the Office of Disciplinary Counsel.

Additionally, if a disqualified or indefinitely suspended attorney is to complete any work for a client, the employing attorney must inform the client, in writing, of the attorney's status before the suspended or disqualified attorney can begin to work on the client's matter.

The comment period for the proposed rule ran through May 13, 2008. The final version is under consideration by the Supreme Court of Ohio.

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RULE V. DISCIPLINARY PROCEDURE

Section 8. Review by Supreme Court; Orders; Costs; Publication; Duties of Disqualified or ~~Resigned~~ Suspended Attorney

* * *

(G)(1) Employment of a Disqualified or Suspended Attorney. ~~A suspended attorney may be employed by another attorney during the term of suspension, provided the employment of the suspended attorney does not involve the practice of law. The suspended attorney and employing attorney shall register the employment with the Disciplinary Counsel on a form prescribed by the Disciplinary Counsel that includes all of the following:~~

~~(a) A statement that the suspended attorney will not perform work in the course of his or her employment that constitutes the practice of law;~~

~~(b) A statement that the employing attorney will supervise and be responsible for the work of the suspended attorney to ensure that the suspended attorney does not engage in the practice of law;~~

~~(c) Any other information considered necessary by the Disciplinary Counsel.~~

~~(2) The Disciplinary Counsel shall provide a copy of the completed form to each appropriate Certified Grievance Committee~~ A disqualified or suspended attorney subject to division (G) of this rule shall not do either of the following:

(a) Have any direct client contact, other than serving as an observer in any meeting, hearing or interaction between an attorney and a client;

(b) Receive, disburse, or otherwise handle client trust funds or property.

(2) An attorney or law firm seeking to enter into an employment, contractual, or consulting relationship with a disqualified or suspended attorney shall register the employment, contractual, or consulting relationship with the Office of Disciplinary Counsel. The registration shall be on a form provided by the Office of Disciplinary Counsel and shall include all of the following:

(a) The name of and contact information for the disqualified or suspended attorney;

(b) The name of and contact information for the attorney or law firm seeking to enter into the relationship with the disqualified or suspended attorney;

(c) The name of and contact information for the attorney responsible for directly supervising the disqualified or suspended attorney, if different than the attorney identified in division (G)(2)(b) of this section;

(d) The capacity in which the disqualified or suspended attorney will be employed, including a description of duties to be performed or services to be provided;

(e) An affidavit executed by either the attorney filing the registration or the supervising attorney indicating that the attorney has read the Supreme Court's order disbarring, accepting the resignation of, or suspending the attorney to be employed and understands the limitations contained in that order;

(f) Any other information considered necessary by the Office of Disciplinary Counsel.

(3) Upon receipt of a completed registration form, the Office of Disciplinary Counsel shall send a written acknowledgement to the attorney or law firm that filed the registration form and any supervising attorney identified on the form. Upon receipt of the written acknowledgement, the employment, contractual, or consulting relationship may commence.

(4) An attorney who registers the employment of a disqualified or suspended attorney shall file an amended registration form with the Office of Disciplinary Counsel when there is any material change in the information provided on a prior registration form and shall notify the Office of Disciplinary Counsel upon termination of the employment, contractual, or consulting relationship.

(5) If a disqualified or indefinitely suspended attorney will perform work or provide services in connection with any client matter, the employing attorney or law firm shall inform the client of the status of the disqualified or suspended attorney. The notice shall be in writing and provided to the client before the disqualified or suspended attorney performs any work or provides any services in connection with the client matter.

(H) Definition. As used in this section, "disqualified attorney" means a former attorney who has been disbarred or who has resigned with discipline pending.

alysha@chalaw.org

A. Alysha Clous

On Selling or Purchasing a Law Practice:

A PRIMER ON PROF. COND. R.1.17

By Alvin E. Mathews Jr.

Gabe Lincoln has been a solo domestic relations practitioner in Capitol, Ohio for 55 years. In recent years, he has reduced his time practicing, spending the winter months in Florida. Ready to retire, he does not wish to abandon his clients, many of whom have ongoing post-decree matters. As Gabe has always practiced alone, he does not know how to transition his clients to another lawyer. He would like the practice to continue to carry his name, and to financially benefit from the value of the practice, including the good will. He also remembers that, traditionally, it was unethical to sell a law practice. He seems to recall that the Ohio rule changed several years ago.

At the annual Capitol Bar Association continuing legal education seminar, the ethics speaker generally discusses the ethics of one lawyer selling his or her practice to another lawyer. Gabe begins thinking seriously about selling his practice. He goes back to the office, pulls out his dusty set of ethics rules, determining there are a variety of considerations in selling a law practice.

Locating a Purchaser and Meeting Ethical Requirements

Gabe's foremost concern is identifying a lawyer worthy of serving his clients. He desperately wants to sell his practice to someone who will care about his clients as much as he does. For several years, Gabe has become a mentor to a 10-year lawyer in town, Sandy O'Conner. Gabe has co-counseled a case with Sandy and has taken note of her brilliance, diligence and extreme loyalty to her clients. Gabe views Sandy as a daughter and thinks she would be perfect to buy his practice. Gabe takes Sandy to lunch and discusses the deal. After mulling things over for a couple of weeks, Gabe and Sandy agree she will purchase his law practice. They both agree to hire ethics and business counsel to accomplish this.

Reviewing the issues in some detail, they determine that Rule 1.17 permits the sale of a law practice, including the good will of the practice.[1] The entire practice must be sold, except where conflicts of interest prohibit the transfer of certain clients.[2] Even if a number of the clients decide not to be represented by the purchasing lawyer, the good-faith requirement is satisfied, if the selling lawyer makes the entire practice available for sale to the purchasing lawyer.[3]

The Rule indicates a "selling lawyer" is a solo lawyer, a firm, the estate of a deceased lawyer, or the representatives of a disabled lawyer, or a lawyer who has abandoned his or her practice.[4] A "purchasing lawyer" is a solo lawyer or a firm.[5] Sales where the purchasing lawyer's only purpose for the purchase is to resell the practice are prohibited.[6]

The prospective purchasing lawyer must run conflicts of interest checks and enter into a confidentiality agreement before client confidences are shared with the prospective purchasing lawyer.[7] Pursuant to the agreement, the purchasing lawyer is to treat the selling lawyer's clients as his or her own. The selling and purchasing lawyers must agree that the purchase is in good faith with the intention and purpose of delivering legal services to the clients, and that the purchasing lawyer will honor all ongoing fee agreements made between the seller and the seller's clients.[8] They may also agree to reasonably limit the ability of the selling lawyer to reenter the practice of law.[9] Neither the selling lawyer nor the purchasing lawyer can exonerate themselves or limit their liability to the clients for any malpractice.[10]

Notice to the Clients

The selling and purchasing lawyers must give joint notice to all active clients of the firm and to those clients with closed files that the selling and purchasing lawyers agree to transfer to the purchasing lawyer upon the sale, containing the following: the proposed sale date; a statement that the purchasing lawyer will honor fee agreements on active matters, and that new fee agreements will be negotiated by the purchasing lawyer and the client; a statement of the right of the client to opt out of the sale and seek another lawyer; a statement that consent to the purchasing lawyer's representation will be presumed, if the client does not object within 90 days of the notice; and a biographical statement of the purchasing lawyer, including his or her disciplinary history.[11]

Having complied with the foregoing, and with the business lawyers' advice regarding the transactional issues, Gabe and Sandy close the deal. They determine the firm can carry on Gabe's name, so long as he continues practicing in the firm or retires.

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1. *Prof. Cond. R. 1.17, Comment [11].*
2. *Id, Comment [6].*
3. *Id.*
4. *Prof. Cond. R. 1.17 (b) (2).*
5. *Prof. Cond. R. 1.17 (b) (1).*
6. *Prof. Cond. R. 1.17(a).*
7. *Prof. Cond. R. 1.17 (c); Comment [7].*
8. *Prof. Cond. R. 1.17(d).*
9. *Id.*
10. *Id., Comment [11].*
11. *Prof. Cond. R. 1.17 (e).*

amathews@bricker.com

Alvin E. Mathews Jr., Bricker & Ecker

The Case of the Buried Bodies

Legal Ethics *and* What It Means To Be A Lawyer

By Lawrence Tibbles

If you decided to build on the fictional works of John Grisham and Stephen King you might make up a case that combines (1) all of the "client from hell" horror stories that you can remember, (2) defending a serial killer to the revulsion of the public and the lawyer's own clients and friends, and (3) a multitude of moral dilemmas, including whether to disclose the location of the bodies of two dead girls.

You might also want your case to shape the ethical doctrine of lawyer confidentiality, contribute to the development of legal ethics rules, and become a staple for law school professional responsibility courses. Perhaps, in addition, you want your case to instruct generations of lawyers and law students about what it means to be a lawyer. Impossible, you say, for one hypothetical case to do all of that.

Or you could talk with Frank Armani, a Syracuse, New York lawyer who in the mid-1970s lived such a case. Mr. Armani presented his story to central Ohio lawyers and law students at Capital University Law School last April. You can read his story in Privileged Information, a book about the case that he co-wrote.[1]

Here are the key points of the case in which Frank Armani risked his professional career, and his life, to represent a serial killer.

After murdering an eighteen-year-old boy, Armani's former client, Robert Garrow is the subject of the biggest police manhunt in New York history.

After his capture, Garrow asks Armani to represent him. The judge agrees and appoints Armani to represent Garrow on the murder charge—for assigned counsel compensation.

Garrow plays psychological games with Armani and his co-counsel Francis Belge, but after several long trips by the lawyers to where Garrow is being held, Garrow admits in confidence that he murdered the boy.

When his representation becomes known, Armani receives the scorn of the public, including many of his clients and friends.

Garrow tells Armani in confidence that he also has murdered and hidden the bodies of two young girls who have been reported missing by their parents. He draws a map.

Armani and Belge investigate and find the bodies of both girls. Armani decides that his oath of office prohibits him from disclosing this information either to the police or to the dead girls' frantic parents. He tells no one.

Armani makes an effort to plea bargain with this information, hoping for an early agreement on an insanity plea whereby Garrow will spend the rest of his life in a hospital for the criminally insane and Armani will be able to disclose his knowledge of the dead girls. The prosecutor rejects a plea bargain.

The police suspect Garrow in the disappearance of the two girls. The father of one of the girls comes to Armani's office and asks Armani to tell him anything that Armani knows about his missing daughter. Armani tells him nothing. Armani is so shaken that he refuses to see the father of the other girl.

Armani's life is threatened for representing that "kid killer." Armani carries a gun and stays in a different motel every night of the trial.

Armani knows that Garrow is a serial killer with a fondness for teenage girls. During the murder trial Armani and his wife discover that Garrow likely had stalked the Armani's own teenage daughter.

At trial Garrow takes the stand and confesses to seven rapes and four murders, including the eighteen-year-old boy and the two girls. The public is uncomprehending when Armani and Belge admit that they had seen the bodies of the two murdered girls and had told no one. Armani receives little support from his local bar.

After Garrow is convicted of murdering the boy, the prosecutor asks a grand jury to indict both Armani and Belge for the crime of not reporting the dead bodies. Armani defends himself by testifying without immunity before the grand jury. The grand jury does not indict Armani, but does indict Belge.[2]

The state bar brings disbarment proceedings against Armani, charging that he acted improperly by (1) failing to disclose to the authorities his knowledge of Garrow's murders of the two girls and the location of their bodies, (2) destroying the records of his conversation with Garrow and Garrow's map, (3) attempting to plea bargain with information of two unsolved murders. The state bar waits four years before releasing its opinion finding that Armani acted properly in every instance.[3]

A contract killer reportedly has been hired to kill Armani. Armani's wife and daughters are ostracized and threatened. They temporarily move to a safer location.

Armani's law practice drys up. A friend tells Armani that if it had been his daughter, he would have shot Armani.

After his conviction and imprisonment, Garrow sues Armani for malpractice.

Four years later, Garrow escapes from prison. A "hit list" of persons he plans to kill is found in his cell. Armani's name is on the list.

Armani gives the police information based on his previous conversations with Garrow suggesting that he may be hiding in an area previously searched by the police. The police reluctantly re-search this area. Garrow is there. There is a gunfight. Garrow is shot and killed by the police.

The case is commonly referred to as "The Buried Bodies Case," although neither body was actually buried. The most enduring aspect of the case is that Armani kept confidential his knowledge of the existence and location of the girls' bodies. The information disclosed to Armani by his client was information about a past crime. The client was in police custody and unlikely ever to be released from jail or a mental institution. Because of the passage of time, if the girls were where Garrow told Armani they were, there was no possibility that either girl could still be alive. But Armani continually confronted other difficult personal moral dilemmas throughout the case.

Armani based his actions on the oath taken when he was admitted to practice in 1956 – to "maintain the confidence and preserve inviolate" the secrets of his clients – and the constitutional guarantee against self-incrimination. He was unaware that New York had recently promulgated the Code of Professional Responsibility with its requirement in DR 4-101 that the lawyer "shall not knowingly...reveal a confidence or secret of a client…[or] use a confidence or secret of a client to the disadvantage of the client...[except that] a lawyer may reveal...the intention of a client to commit a crime and the information necessary to prevent the crime." This language does not permit Armani to voluntarily reveal information about the girls' bodies. However, it does justify Armani's voluntarily disclosing information he had received years earlier from his client to direct the police to the hiding place of Garrow, a serial killer who had made a hit list of people he planned to kill.

Over the past thirty years, when discussing this case with their students, legal ethics teachers have done exactly what you have been doing while reading Armani's story – they changed the facts in order to raise additional, and more difficult, confidentiality issues. What if it was possible that Garrow had not already killed the girls, but was holding them prisoner? What if Garrow had given this information to Armani by telephone before he was apprehended? What if searchers were likely to be injured or killed while searching for the girls in treacherous terrain? What if another person was being charged with or convicted of murdering one of the girls? What if Garrow, a serial killer, had been improperly arrested and, upon a proper motion from Armani, would have to be released – perhaps to kill again?

Frank Armani's case has contributed to an important exception to client confidentiality now found in both the Model Rules of Professional Conduct and the new Ohio Rules of Professional Conduct. Ohio Rule 1.6(b)(1) provides that the lawyer may reveal "information relating to the representation of a client...to the extent that the lawyer reasonably believes necessary...to prevent reasonably certain death or substantial bodily harm...."

The importance of this case in the development of legal ethics has led a luminary in legal ethics, Professor Thomas Morgan, to conclude that "...this case is not simply an interesting footnote. It is a central case in the development of our understanding and appreciation of what it means to be a lawyer.[4]

This case is also about the courage of a lawyer who acted in the face of compassionate personal feelings for the parents of the dead girls, financial sacrifice, loss of clients and friends, death threats to himself and his family, threatened criminal prosecution, and disbarment proceedings. Professor Lisa Lerman, a leader in the field of legal ethics, has said that she does not have many heroes who are lawyers, but that Frank Armani would be at the top of her list.[5]

Frank Armani does not consider himself to be a hero – but a lawyer doing what our system of justice depends upon lawyers to do. Real heroes seldom tell the rest of us that they are heroes. But that should not stop us from recognizing and appreciating a member of our profession who, at great personal sacrifice, defines the essence of a good and decent lawyer.

April 2, 2008, the Ethics Institute of Capital University Law School and the Columbus Bar Association Professionalism Committee co-sponsored a program "Defending Detested Clients and Making Unpopular Decisions: Lawyers and Their Professional Responsibilities." Frank H. Armani was the featured speaker. The program included a panel discussion with local lawyers Jonathan Coughlan, David Goldberger, Dennis W. McNamara, and Holly Wallinger.

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1. *Tom Alibrandi with Frank H Armani, PRIVILEGED INFORMATION (Dodd, Mead 1984). The case is also the basis for the 1987 movie "Sworn to Silence."*

2. *Three courts in succession held that Belge could not be indicted for failing to comply with a misdemeanor statute requiring the reporting of dead bodies. The courts not only misunderstood the difference between the ethical doctrine of confidentiality and the attorney client privilege, but appeared to bow to the media-led public outcry over Armani and Belge's efforts to protect client confidentiality.*

> *"We believe that the attorney-client privilege attached insofar as the communications were to advance a client's interests, and that the privilege effectively shielded the defendant-attorney from his actions which would otherwise have violated the Public Health Law....We believe that an attorney must protect his client's interests, but also must observe basic human standards of decency, having due regard to the need that the legal system accord justice to the interests of society and its individual members....we limit our determination to the issue [of attorney-client privilege] and do not reach the ethical questions underlying the case."*
> *People v. Belge, 376 N.Y.S.2d 771 (NY App.Div. 1975).*

3. *N.Y. Bar Ass'n Comm. On Prof'l Ethics, O. 479 (1978)*

4. *Lerman, Armani, Morgan, and Freedman, "The Buried Bodies Case: Alive and Well after Thirty Years, 2007 SYMPOSIUM ISSUE OF THE PROFESSIONAL LAWYER 19 at 22 (2007).*

5. *Mark Hansen, "The Toughest Call," 93 A.B.A.J. 28 at 29 (2007).*

ltibbles@law.capital.edu

Lawrence Tibbles,
Capital University Law School

First Tuesday After The First Monday
AND THINGS TO KNOW ABOUT OHIO'S *"LITTLE"* HATCH ACT

By Christina L. Corl

The prohibitions of the Hatch Act specifically apply to officers or employees of any "state or local agency."

One of the perks of being Associate General Counsel for the National Fraternal Order of Police is discovering all kinds of obscure federal statutes that affect the lives of public employees. In this election year, the provisions of the Federal Hatch Act and the Ohio "Little" Hatch Act will be of particular importance, as these statutes limit the political activity of public employees. Below, please find an outline of everything you need to know about the Hatch Act.

What does the act prohibit?

5 U.S.C.S. § 1502 is titled "Influencing Elections; Taking Part in Political Campaigns; Prohibitions; Exceptions" and states as follows:

(a) A state or local officer or employee may not (1) Use his official authority or influence for the purpose of interfering with or affecting the result of an election or a nomination for office;
(2) Directly or indirectly coerce, attempt to coerce, command, or advise a state or local officer or employee to pay, lend, or contribute anything of value to a party, committee, organization, agency, or person for political purposes; or (3) Be a candidate for elective office.
(b) A state or local officer or employee retains the right to vote as he chooses and to express his opinions on political subjects and candidates.
(c) [provision] (a)(3) of this section does not apply to (1) The governor or lieutenant governor of a state or an individual authorized by law to act as governor; (2) The mayor of a city; (3) A duly elected head of an executive department of a state or municipality who is not classified under a state or municipal merit or civil-service system; or (4) An individual holding elective office.

First, it should be noted that the Hatch Act does not prohibit all forms of political expression. It specifically prohibits using one's status as a state or municipal employee to influence the outcome of any partisan election or proceeding. For instance, a state or city employee is not prohibited from attending fundraisers, displaying yard signs or bumper stickers, or attending political rallies.[1] However, an employee cannot engage in campaigning during working hours or use any official authority or influence for political purposes.[2]

The Act also prohibits a public employee from running for any elected partisan office. Specifically, the entire election must be nonpartisan. Just because the particular employee may run unaffiliated with any party, he or she would still violate the terms of the Hatch Act if any of the other candidates are running on a partisan ticket. 5 U.S.C.S. § 1503.

In addition, simply putting a state or local governmental employee on unpaid administrative leave will not cure any violations of the Hatch Act. "Covered . . . employees are subject to the prohibitions of the Hatch Act regardless of leave status, such that a covered state employee on leave without pay to run for political office is subject to the prohibitions of the Act."[3]

Who is subject to the Hatch Act?

The prohibitions of the Hatch Act specifically apply to officers or employees of any "state or local agency." State or local agency means ". . . the Executive Branch of a state, municipality, or other political subdivision of a state, or an agency or department thereof." 5 U.S.C.S. § 1501(2).

A state or local officer or employee means: ". . . an individual employed by a state or local agency whose principal employment is in connection with an activity which is financed in whole or in part by loans or grants made by the United States or federal agency, but does not include:
(A) An individual who exercises no functions in connection with that activity; or (B) An individual employed by an educational or research institution, establishment, agency, or system which is supported in whole or in part by a state or political subdivision thereof, or by a recognized religious, philanthropic, or cultural organization."

5 U.S.C.S. § 1501(4).

The relevant analysis concerning the employee's contact with federal funds is whether the employee " . . . as a normal and foreseeable incident to her principal job or position . . . performs duties in connection with an activity financed in whole or in part by federal loans or grants . . ."[4] Whether or not the employee's salary is paid by federal funds is not a relevant consideration.[5] Activities that have been held to be "in connection with an activity financed in whole or in part by federal loans or grants" have included approving the use of federal funding, supervising employees whose salaries are paid by federal funding, purchasing items with money obtained from federal funds, supervising the use of federal funds, overall responsibility for the operations of department funded at least in part by federal funds, reviewing and analyzing policies and procedures to determine compliance with applicable federal law, reviewing federal grant applications, preparing annual reports regarding federal funding, and preparing press releases and answering questions regarding federal funding.[6]

So, once again, whether or not an employee's salary is paid by federal funds is not relevant in the analysis. Instead, the analysis of which employees are covered by the Act involves whether that employee's job responsibilities have to do with any decision making, administration or supervision regarding the use of federal funds.

Who enforces The Act and what are the potential sanctions?

Pursuant to 5 U.S.C.S. § 1504, any time a federal agency learns that a state or local officer or employee may be violating the Act, it is required to report the matter to Special Counsel for the Merit Systems Protection Board. Special Counsel is charged with the duty to investigate and make recommendations to the Merit Systems Protection Board. Special Counsel is also required to mail a certified mail notice to the officer or employee that contains a summary of the alleged violation, and notify him or her of the time and place for a hearing on the topic. The hearing date is then set, but it may not be less than 10 days after the date of mailing the notice to the officer or employee. Further, there is no statute of limitations that is applicable to the Hatch Act.[7] Once the Special Counsel has investigated, he or she makes recommendations to the Merit Systems Protection Board which in turn issues notice of its findings to the state or local agency, officer or employee.

For "substantial or conspicuous" infractions, the Board will typically recommend that the employee be terminated. Typically Courts and the M.S.P.R. have found that any partisan candidacy constitutes a substantial infraction and will recommend termination. However, the Board can recognize mitigating factors which would warrant a lesser penalty than termination.[8] Those factors are as follows:

1. The nature of the offense and the extent of the employee's participation;
2. The employee's motive and intent;
3. Whether the employee has received advice of counsel regarding the activities at issue;
4. Whether the employee has ceased the activities;
5. The employee's past employment record; and
6. The political coloring of the employee's activities.[9]

Interestingly, even if the Board determines that termination of the employee is warranted, the state or local agency is not required to terminate the employee.[10] Instead, if the agency chooses not to terminate the offending employee, the penalty is forfeiture of federal funds equivalent to two (2) years worth of that employee's salary. 5 U.S.C.S. § 1506(a)(2). The agency is given 30 days after notice from the Board to terminate the offending employee.

In some cases, state or local agencies have terminated the employee and then rehired the same employee at another or a related state or local agency that does not receive federal funds. This issue is also addressed in 5 U.S.C.S. § 1506. If the terminated state or local employee is reappointed within 18 months to an office or employment in the same state in a state or local agency that does not receive loans or grants from a federal agency, the same "two years' pay" penalty applies to the agency that originally employed the officer. In other words, the state or local agency simply cannot move the employee in lieu of termination because the same "two years' salary" penalty will apply.

In addition to the Federal Act, the State of Ohio has enacted what is termed to be the "Little" Hatch Act, O.R.C. § 124.57. The Act states that "no officer or employee in the classified service of the State, several counties, cities, and city school districts...shall directly or indirectly...be an officer in any political organization or take part in politics other than to vote as he pleases and to express freely his political opinion." The Ohio Administrative Code considers "campaigning by writing for publications, by distributing political material...on behalf of a candidate for partisan elective office, when such activities are directed toward parties' success..." as being prohibited by the statute.

Specifically in the case of State ex rel Northern Ohio Patrolmen's Benevolent Association v. Wayne County Sheriff's Department, 27 Ohio App. 3d 175 (1986), a County Sheriff Deputy was discharged from his position for issuing a press release endorsing one candidate for public office over another. He was discharged for a violation of Ohio's "Little" Hatch Act and such discharge was upheld by the 9th Appellate District Court of Appeals.

You will note that the State of Ohio's "Little" Hatch Act is modeled after the Federal statute. Therefore, endorsing a candidate for elective office if you are a state, county or municipal employee in your official capacity would be a violation of the Act. In this case, the State's "little" Hatch Act applies only to employees in the "classified" civil service of the state. O.R.C. § 124.57. All elected officials under Ohio law are in the unclassified service, so the State's "little" Hatch Act does not apply to any elected officials. See O.R.C. § 142.11.

Public employees should be cognizant of the restrictions contained in both the Federal Hatch Act and the Ohio "Little" Hatch Act, especially in this election year. Since anyone can report a potential violation of the Hatch Act, a little knowledge and caution go a long way.

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1. ***McKechnie v. McDermott***, *595 F. Supp. 672 (N. D. Ind. 1984).*
2. ***Id.***
3. ***Special Counsel v. Kehoe***, *33 M.S.R.P. 56 (1987);* ***Minnesota Dept. of Jobs & Training v. M.S.P.B.***, *875 F. 2d 179 (8th Cir. 1989).*
4. ***Special Counsel v. Williams*** *56 M.S.P.R. 277 (1993).*
5. ***Id.***
6. *See,* ***Id.***; ***Special Counsel v. Gallagher***, *44 M.S.P.R. 57 (1990);* ***Special Counsel v. Fergus***, *44 M.S.P.R. 440 (1990);* ***Special Counsel v. Carter***, *45 M.S.P.R. 447 (1990).*
7. ***Special Counsel v. Purnell***, *37 M.S.P.R. 184 (1988).*
8. ***Special Counsel v. Brondyk***, *42 M.S.P.R. 333 (1989).*
9. ***Special Counsel v. Purnell***, *37 M.S.P.R. 184 (1988).*
10. ***Neustein v. Mitchell***, *52 F. Supp. 531 (D.C.N.Y. 1943).*

Christina L. Corl,
Crabbe Brown & James

Practice Tips For The New
SEX OFFENDER REGISTRATION LAW

By L. Leah Reibel

The Adam Walsh Act,[1] S.B. 10, is an update of Megan's law, which requires registration of sex offenders. The law also requires in-person verification at the county Sheriff's office, and in the most serious cases, community notification. The Adam Walsh Act is currently undergoing several legal challenges on the basis that it is unconstitutional.

The new sex offender classification system is completely crime driven. In other words, a person is automatically classified according to the crime of conviction; regardless of the facts of the particular case, likelihood of reoffending, previous criminal history, and other normal sentencing factors. The Adam Walsh Act imposes a three-tier system, going from least to most grave:

Tier 1) Must register for 15 years for adults, 10 years for juveniles, with annual in-person verification at the county Sheriff's office. Includes importuning, voyeurism, sexual imposition, pandering obscenity, menacing by stalking with sexual motivation, and other offenses. No community notification.

Tier 2) Must register for 25 years for adults, 20 years for juveniles, in-person verification required every 180 days. Includes compelling prostitution, pandering obscenity involving a minor, illegal use of a minor in nudity-oriented material or performance, gross sexual imposition (victim under 13), certain types of child endangering, abduction with sexual motivation, and others. No community notification.

Tier 3) Lifetime registration for both adults and juveniles, in-person verification required every 90 days. Includes rape, sexual battery, murder with sexual motivation, certain sections of kidnapping, felonious assault with sexual motivation, and others.[2]

Community notification required

The old Megan's law also had three levels of offenders, but required registration for only 10 years for the lowest level offender, and 20 years for most of the middle level of offenders; among other differences.

According to the State Public Defender's Office, at least 26,000 offenders are subject to reclassification in the state of Ohio. There are concerns about the ex post facto nature of this law and its constitutional implications. Many offenders sentenced under Megan's Law have finished their years of registration, and now find that they will be registering for life. Challenges to the application of the law can also raise a breach of contract issue. A person entering into a plea agreement years ago had no idea they were signing up for a lifetime of registration and public humiliation. One of the most troubling aspects of the new law is that it subjects juveniles to the same classification scheme as adults, including lifetime registration. It is also generally no longer possible to seal a juvenile sex offender case.

Franklin County Practice

The judges in Franklin County vary in how they are handling this increased caseload. Some judges are automatically staying all the cases, and some have issued Injunctions. Some are issuing a Notice of Stay for each individual case, and some are staying the community notification requirement but not the registration requirement. This is problematic, when for example a person's duty to register with the sheriff's office has expired, but they have to register again under the new law. Additionally, depending on the final outcome of pending challenges to the law, once a person is in the computer system as a sex offender, it is extremely difficult to get them out.

Interestingly for criminal law practitioners, these cases are considered civil actions. When the offender receives the reclassification letter from the Attorney General's office, the offender has 60 days from receipt to challenge the reclassification, (although *Doe v. Dann* has extended that deadline). Procedurally, the first step is to file a Petition to Contest Application of the Adam Walsh Act and to request a hearing pursuant to R.C. 2950.032(E). When the petition is filed, it will be filed in the civil division, given an "MS" case number and set for a hearing. At that point, the Franklin County Public Defender or a court-appointed attorney will be appointed, if there is not already an attorney on the case. If the particular court or judge has not already issued a blanket stay for all cases, the attorney can request an Entry of Stay for the particular case. The prosecutor's office will often file a Memorandum opposing the appointment of counsel, on the basis that it is a civil action and there is no right to counsel.

If a person was previously labeled a sexually oriented offender or a habitual sex offender and was not previously subject to community notification; and has now been reclassified a Tier III offender with a community notification requirement, they can file a Motion for Relief from Community Notification.

Federal

John Doe I et al v. Marc Dann, Ohio Attorney General, et al. Case No. 1:8:CV-00220-PAG (N. Dist. Ohio), ("Doe v. Dann") Federal court Judge Patricia Gaughan issued an agreed order on February 6, 2008 that extended the 60-day filing deadline to challenge reclassification and stayed community notification only for those who were not previously required to register. Under this decision, persons affected by S.B. 10 retroactively must still register, but the case simply gives people who have yet to file a legal challenge more time to do so. The current order is not a permanent injunction and the case is still pending.

Mikaloff v. Walsh, Case #5:06-CV-96 (N.D. Ohio, filed September 4, 2007). The Northern District of Ohio held that Ohio's residency restrictions are punitive and they violate the Ex Post Facto Clause of the U.S. Constitution when applied retroactively.

State

Hyle v. Porter, 117 Ohio St.3d 165, 2008-Ohio-542. The Ohio Supreme Court held that Ohio's residency restrictions do not apply retroactively to someone who bought his home and committed his offense before the effective date of the statute.

State v. Ferguson, 2007-1427. In this pending case, the Ohio Supreme Court has agreed to decide whether Ohio's current sex offender registration law violates the Ex Post Facto and Retroactivity clauses of the U.S. and Ohio constitutions.

David Wilson and M.A. v. State, Case # 07 CV 1642, Declaratory Judgment with Class Action Allegations, Licking County, filed on February 13, 2008. It raises various challenges to the constitutionality of S.B. 10 as a violation of the separation of powers doctrine and the contracts, retroactivity, due process, double jeopardy, and inalienable rights clauses, with the Ohio Justice and Policy Center taking the lead.

Resources

Contact the Central Ohio Association of Criminal Defense Lawyers to speak with local attorneys about S.B. 10 cases, (614) 488-8528.

The Office of the Ohio Public Defender has information regarding ongoing litigation, as well as template forms to use, at www.opd.ohio.gov. Go to the "Attorney Information" tab where there are many helpful sample pleadings, copies of entries filed in counties across the state, and an updated chart on how each county is handling their S.B. 10 cases.

For information on other counties, you can call Jay Macke, Office of the Ohio Public Defender, 800-686-1573.

Some counties have issued a county-wide stay order that stays the retroactive effect of the new law for offenders who have filed timely petitions. These counties include Allen, Geauga, Licking, Lorain, Medina, Stark, Summit, Van Wert, and Warren.

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1. *Amends Ohio Revised Code 2950.01 et seq.*
2. *Note that an attempt, complicity, or conspiracy to commit any of these offenses is still the same tier. So, for example, an attempted rape still requires lifetime registration.*

reibel.law@gmail.com

L. Leah Reibel

On Preservation And Discovery Of Electronically Stored Information

NEW RULE FOR OHIO

By Douglas L. Rogers

Unless the Ohio General Assembly unexpectedly adopts a resolution of disapproval before July 1, 2008, new Ohio Rules of Civil Procedure pertaining to the preservation and discovery of electronically stored information (ESI) will become effective on July 1.

Discoverable ESI can include e-mails, Word documents, Excel spreadsheets, Power Point documents, text messages, voice mail messages and any other electronic information stored on easily accessible parts of the hard drive of a computer (sometimes referred to as active or on-line data). Discoverable ESI can also include less accessible ESI, such as back-up tapes and deleted documents (documents that the user has deleted from the directory system of a computer but that may still reside in the unallocated file space of a hard drive). Discoverable ESI may be found not only on a company's central computer systems, but also on laptops and other computers used by employees in their homes. Failure to understand the application of these rules to ESI and the corresponding obligations of counsel could result in clients losing cases and in clients and counsel being sanctioned.

Under new Rule 26, a party may obtain relevant discovery of ESI unless production would impose an undue burden or cost, taking into consideration such matters as: (a) the discovery sought is cumulative or duplicative; (b) the information can be obtained from some other source; (c) the party seeking discovery has had ample opportunity to obtain the information; and (d) the burden of the proposed discovery outweighs a likely benefit. Assuming state courts follow the lead of federal courts, if the requested ESI is on-line or active, the burden will be on the party who would otherwise produce the information to establish that production would be unduly burdensome.

Under new Rule 34(B), a party requesting ESI may specify the form or forms in which the ESI is to be produced, such as "native" format – the file structure of the information originally created with an application/program (e.g., a .doc file for a Word document). Other possible file formats for production include various static formats, such as .pdf or .tiff. The party receiving a request for ESI in a particular format can object to producing it in that format, and suggest an alternate format for production. If the parties do not reach agreement, the court will have to decide the form of production. If the requesting party does not specify the form in which it wishes the ESI to be produced, the "responding party may produce the information in a form or forms in which the information is ordinarily maintained if that form is reasonably useable, or in any form that is reasonably useable."

As a matter of common law, once a company reasonably expects litigation will occur, the company has an obligation to preserve ESI that is likely to be relevant to the claims and defenses of the dispute. If a client does not preserve the required documents, the client and its attorneys can be sanctioned and lose the case.

New Rule 37(F) provides a limited safe harbor in connection with a failure to preserve ESI: "Absent exceptional circumstances, a court may not impose sanctions under these rules on a party for failing to provide electronically stored information lost as a result of the routine, good faith operation of an electronic information system." The Rule lists certain factors a court may consider in determining whether destruction of documents would constitute the "routine, good faith operation of an electronic information system" justifying not imposing sanctions for the destruction. Notwithstanding new Rule 37(F), based on the factors listed in 37(F) and federal case law involving comparable federal rules, a company may have to suspend the operation of part of its computer system, if it is set to automatically destroy emails after a certain period of time, in order to avoid sanctions for the destruction of evidence

Attorneys must become familiar with technical issues related to computer software, ESI and the computer systems of their clients. Attorneys cannot rely solely on client assurances that the client has preserved all the ESI needed to be preserved. An attorney must advise a client facing litigation of the client's obligation to preserve relevant documents/ESI and should also take steps to confirm the client has in fact preserved the documents/ESI.

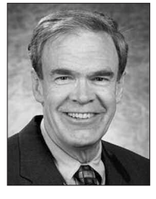
To help practitioners, a nonprofit organization that has been working on ESI discovery practices for years, the Sedona Conference, has a posted developed guidelines concerning discovery and preservation of ESI on its website, www.sedonaconference.org.

The Electronic Discovery Reference Model is another established project addressing practical problems associated with electronic discovery that provides on its website, www.edrm.net, significant resources for attorneys to review for assistance. Finally, the National Conference of Commissioners on State Laws has developed Uniform Rules Relating To The Discovery of Electronically Stored Information that differ certain respects from the Ohio Rules but that contain helpful notes and commentary at http://www.law.upenn.edu/bll/archives/ulc/udoera/2007_final.htm.

An ounce of prevention in terms of reviewing available resources on the discovery of ESI and communicating clearly with the client can help prevent severe consequences later.

dlrogers@vorys.com

Douglas L. Rogers, Vorys Sater Seymour and Pease



Civil Jury Trials

FRANKLIN COUNTY COMMON PLEAS COURT

By Belinda S. Barnes and Monica L. Waller

Verdict: $21,500.00. Auto Accident. Defendant Veddern failed to yield turning left and struck a car in which Plaintiff Misty Davis, 28 years old, was riding as a passenger. Mr. Veddern's negligence was admitted in exchange for a cap on damages. Plaintiff incurred a non-displaced fracture of the fifth metatarsal (boxers fracture) requiring immobilization and pain medication. She was employed through a temporary agency in a machine shop and missed approximately two months of work. Ms. Davis was a divorced mother of four at the time, the children's ages ranging from 15 months to 8 years old. Ms. Davis had photographs of the bruising to her left lower calf and the immobilized left arm and submitted medical expenses that included about six weeks of chiropractic treatment. Medical bills: $7,300. Pain and suffering: $12,000. Lost wages: $2,200. Plaintiff's expert: James Hardin, D.O. No defense expert. Settlement demand: $20,000. Settlement offer: $18,000. One day trial. Plaintiff's attorney: Andrew W. Cecil. Defendant's attorney: James E. Featherstone. Judge: Schneider. *Misty Davis v. Harold Veddern,* Case No. 05CVC-01-215 (2006).

Verdict: $16,000.00 ($15,530.00 for Debra Crockett and $470.00 for Donald Crockett). Auto Accident. This was a rear-end collision automobile accident wherein the plaintiff claimed a mild strain to the neck and lower back. Medical bills: $16,990.40. Lost wages: $1,827.30. Plaintiffs' expert: Dr. Guyton (physical medicine and rehabilitation). Defense expert: Dr. Walter Hauser (orthopedic surgeon). Settlement demand: $70,000. Settlement offer: $17,000. Plaintiffs' attorney: Daniel White. Defendant's attorney: Jill Mercer. Judge: Martin (visiting judge). *Debra L. Crockett, et al. v. Dorinda Jordan, et al.,* Case No. 04CVC-10-10344 (2006).

Verdict: $12,075.00. Auto accident. Defendant's vehicle struck the rear of the vehicle of the plaintiff (50 years old). Plaintiff complained of no pain at the scene. The police were not called and plaintiff went to his chiropractor in Wheeling, West Virginia three days after the accident with complaints of neck pain and headaches. Plaintiff first started treating with the chiropractor in 1987. Plaintiff and the chiropractor testified that the initial treatment was for low back. 18 months after the accident, the family doctor referred the plaintiff to pain management. Medical bills: $19,059. No lost wages. Plaintiff's experts: Robert Helfer, D.C. and Steven Mills, M.D. No defense expert. Settlement demand: $50,000. Settlement offer: $2,000. Two day trial. Plaintiff's attorney: James Nichelson. Defendant's attorney: Gary L. Grubler. Judge: Lynch. Judge Sitting By Assignment: John Martin. *John Mattern, et al. v. Ronald Williams*. Case No: 04CVC-04-4044 (2006).

Verdict: $11,214.83. Auto Accident. Stipulated liability. Rear end collision. Damage to plaintiff's car was $500. Damage to defendant's car was $3,000. Plaintiff claimed permanent soft tissue injury to her spine including neck, mid back and low back. She also claimed to have herniated a disc in her cervical spine at C5-6. Treatment consisted of an emergency room visit, two years of chiropractic treatment and three consults with a neurologist. There was a six month gap in plaintiff's treatment and some evidence suggesting that plaintiff was assaulted during that period of time. There was also some diagnostic finding indicative of plaintiff having multiple sclerosis. Jury awarded $3,214.83 in medical bills and $8,000 in pain and suffering. Medical bills: $15,810.00 including a $6,800 chiropractic bill. No lost wages. Plaintiff's experts: Frederick Graff, D.C. and Namid Dadmire, M.D. Defendant's expert: Joseph Schlonsky, M.D. Settlement demand: $60.000. Settlement offer: $15,000. Three day trial. Plaintiff's attorney: Christopher Pettit. Defendant's attorney: Kim Schellhaas. Judge: Magistrate Tim McCarthy for Judge Julie Lynch. *Traci DeCarlo v. Janet Leffler, et. al.*, Case No. 04 CVC 8730 (2006).

Verdict: $10,000. Personal Injury/Auto Accident. On April 15, 2003, Defendant caused a multi-vehicle chain reaction rear end accident. Plaintiff occupied the fourth vehicle ahead of Defendant. His vehicle sustained a small dent in the middle of both the rear and front bumpers. Plaintiff suffered neck and shoulder pain immediately following the accident. He also suffered from hepatitis B, which was in remission at the time of the accident. He was given non-steroidal anti-inflammatories for his neck and shoulder pain. Several months later, Plaintiff suffered liver failure and had a liver transplant. Plaintiff's counsel argued that the care Plaintiff received for the auto accident injury led to reactivating Plaintiff's hepatitis B and resulted in his liver failure and transplant. The total medical expenses presented to the jury, including the costs related to the liver failure transplant, came to approximately $574,000. Defense counsel argued that the legitimate medical expenses incurred to treat the actual soft tissue neck and shoulder injury totaled $4,562.19. Plaintiff also argued that he lost approximately $50,000 in earnings because of the automobile accident, liver failure and transplant surgery. The wage loss related to the soft tissue injuries was $500 to $600. Plaintiff's experts: Dr. James O'Donnell, doctor of pharmacology from Chicago, Illinois, and local treating physician, Dr. Larry D. Swanner. Defendant's expert: Dr. Carolyn Brackett, Associate Professor of Pharmacy, Ohio State University School of Pharmacy. Settlement demand: $700,000. Settlement offer: $30,000. Eight day trial. Plaintiff's attorneys: James Blumenstiel and Aaron Falvo. Defendant's attorney: Thomas J. Keener. Judge: Hogan. *Joseph Gbonoi, et al. v. Tri-City Industrial Power, Inc., et al.*, Case No. 04CVC-02-1736 (2006).

Verdict: $5,000. Auto Accident. Rear end collision. Clear liability. Plaintiff was stopped at a red light, driving a delivery van for his employer. He was struck from behind by the defendant on April 12,

Continued on Page 18

Continued from Page 17

2002. Plaintiff claimed soft tissue injuries only. Medical bills: $8,268.57. Lost wages: $1,428.00 (no future claimed). Plaintiff's expert: Dr. Butler (Cleveland, OH). No defense expert. Settlement demand: $35,000. Settlement offer: $1,500. Two day trial. Plaintiffs attorney: Albert C. Sammon. Defendant's attorney: Daniel P. Whitehead. Judge: Reece. *Joseph Reale v. Lakishia Alexander,* Case No. 04CVH-04-3946 (2005).

Verdict: Defense verdict. Medical Malpractice. Plaintiff was a gentleman in his early thirties who underwent elective LASIK surgery (where the cornea of the eye is sculpted by a laser to improve distance vision) at Revision Advanced Surgery Center. Plaintiff sued the surgery center, the ophthalmologist, and the optometrist involved. The surgery was uneventful and plaintiff's vision was greatly improved, but six days post-surgery the plaintiff experienced a retinal detachment. As a result of the detachment, plaintiff lost partial vision in one eye. Plaintiff alleged that he was not a proper candidate for LASIK surgery and that the surgery caused the detachment. The defense alleged that the plaintiff was a proper candidate for the surgery, that he received full informed consent for the surgery, that he was properly treated/evaluated post-surgery, and that the surgery did not cause the detachment. Medical bills: For subsequent retinal surgeries. No lost wages. Plaintiff's expert: Mark Abrams, M.D. Defendant's expert: Curtin Kelley, M.D. Settlement demand: $450,000. No settlement offer. Six day trial. Plaintiff's attorney: Richard Topper. Defendant's attorney: Brian M. Kneafsey, Jr. Judge: Hogan. *Patrick Love v. Revision Advanced Surgery Center, Inc., et al*., Case No. 04 CV 009428 (2006).

Verdict: $0.00. Automobile accident. On February 18, 2003, on North Fourth Street, Columbus, Ohio, plaintiff stopped in a large dump truck that he was using for snow removal and he was rear-ended by the defendant who was driving a Cadillac. There was no damage to either vehicle and plaintiff did not complain of injury at the scene of the accident. The next day he went to his family doctor who referred him to a chiropractor. The chiropractic treatment began eight days after the accident. Plaintiff alleged that defendant was intoxicated at the time of the accident. The Court bifurcated compensatory damages from the punitive damages claim. Medical bills: $3,300. Lost wages: $5,000-$6,000. Plaintiff's expert: Mark Matvey, D.C. No defense expert. Settlement demand: $19,300. Settlement offer: $2,800. Two day trial. Plaintiff's attorney: Barry Epstein. Defendant's attorney: Rick E. Marsh. Judge: Hogan. *Michael Crowder v. Andre O. Poulin,* Case No. 04CVC-06-06501 (2006).

bbarnes@lanealton.com
awaller@lanealton.com

Belinda S. Barnes and Monica L. Waller

Ten Lessons

A YOUNG LAWYER MUST LEARN FOR SUCCESS AND HAPPINESS IN THE PRACTICE OF LAW

By The Honorable William A. Klatt

The practice of law is a demanding and challenging profession — and it can also be a very enjoyable and fulfilling one. Although law schools do a good job preparing students for the bar examination, there are some important lessons that are difficult to teach in an academic setting. Most of these lessons are not directly related to the study of law. Nevertheless, I believe they are critical to professional success and happiness. I have listed below ten lessons that I believe a young lawyer must learn to achieve success and happiness in the practice of law.

1. You have to take primary responsibility for your own professional development. Unlike law school where there is an established curriculum, there is no set curriculum once you enter the practice. Given the challenges lawyers face in meeting their day-to-day professional obligations, it can be difficult to find the time and energy to assess what knowledge or skills you need to develop or improve in order to excel in your chosen area of practice. A periodic self-assessment of your strengths and weaknesses is the first step toward becoming a better lawyer. The second critical step is to develop and implement a strategy to work on your weaknesses. Watch and learn from lawyers who are recognized for their competence and professionalism, and then seek out opportunities to implement what you have learned.

2. Remember, the practice of law is primarily a people-oriented profession. Work ethic, interpersonal skills and personal integrity are critical components for long-term success and happiness in the practice of law. A lawyer who works hard and can relate well to clients, colleagues, opposing counsel, judges and court personnel has the essential ingredients for sustained success. The smartest lawyer is not necessarily the best or most successful lawyer.

3. Although a strong work ethic is an essential characteristic of any good lawyer, you need to maintain a balance in your life. Too much of a good thing can have unintended adverse consequences. It is very important to develop and maintain the proper balance between your professional obligations and those obligations you have to yourself, your family, friends, and your community. There is no magic formula. Each person must find and maintain a balance that works for him or her. A lawyer with balance in his or her life is far more likely to cope effectively with stress and to consistently demonstrate the mental energy, judgment, and interpersonal skills necessary for long-term happiness and success in the practice of law.

4. Always treat your secretary, office staff, court reporters, paralegals, and court personnel with the utmost courtesy and respect. These people all have important jobs to do and a lawyer can learn a lot from them. Moreover, many a lawyer has been saved from embarrassment or worse, due to the diligent efforts of a secretary, clerk, or staff member. These people deserve your respect and support.

5. Good lawyers are problem solvers — not just problem identifiers. Few things will turn a client away more quickly than a lawyer who focuses on identifying all the obstacles that stand in the way of the client's objective, but fails to offer potential solutions to overcome those obstacles. It is also important to understand the context of the problem. A good lawyer recognizes that the context of the problem often provides clues to the solution. Fundamentally, clients want problem solvers.

6. A good lawyer is intellectually tenacious. Don't stop researching an issue until you are satisfied that you fully understand all the relevant points of law. A complete understanding will allow you to recognize nuances and to draw distinctions. Intellectual tenacity is an essential ingredient of effective problem solving.

7. A confident lawyer is more likely to be successful and happy. A chronically anxious, self-doubting lawyer is generally not very happy or successful. A good lawyer builds confidence by mastering the necessary knowledge and skills in a chosen area of practice. When you demonstrate justifiable confidence, you will attract clients, earn the respect of your colleagues and maximize your effectiveness as a lawyer. No lawyer is perfect and every lawyer makes mistakes — but a good lawyer does not let that fact erode self-confidence. Mistakes present some of the best learning opportunities.

8. Never compromise your personal integrity or your professional ethical obligations. Putting aside the obvious threat to your law license, nothing should be more important to a lawyer than a reputation for honesty, integrity, and professionalism. Although the legal community in central Ohio is large, it does not take long for an attorney to develop a reputation among lawyers and judges. Damage to your reputation can occur even more quickly and can be difficult to repair.

9. Set and maintain high standards for any written product that bears your name. Whether it is a letter, legal opinion, memorandum, pleading, motion, or brief, that written product is a direct and lasting reflection of your abilities as a lawyer.

10. Every few years assess whether you are getting all that you want out of your professional life. The practice of law offers a diverse array of professional opportunities and substantive areas. If you are not happy with your professional life, invest the time and energy needed to determine why, and if necessary, explore other practice areas that might be a better fit for your natural abilities and personality. You are more likely to excel in an area of the law you enjoy. Life is short — don't waste it doing something that does not take advantage of your natural interests and abilities.

A lawyer who learns these lessons is far more likely to realize success and happiness in his or her professional life.

waklatt@co.franklin.oh.us

The Honorable William A. Klatt, Tenth District Court of Appeals

Demand For Anti-Stalking Orders Keeps Going Up

Filings have continued to increase in 2008 and Atiba Jones, the court's executive director, worries that even more dramatic increases might be in store during the summer as gasoline prices, evictions and foreclosures keep heading upward while the economy continues to sink.

By The Honorable David E. Cain

A common pleas magistrate hearing requests for Civil Protection Orders (CPOs) survived barely more than a year on a part-time basis. She is now working full-time as the demand continues to skyrocket.

In April, 2007, the judges hired Attorney Pam Erdy, who had a criminal and domestic practice, to conduct CPO hearings from 4 p.m. to 8 p.m. Mondays through Fridays.

The court's eight general magistrates had been taking turns with CPO hearings but having trouble keeping up with other responsibilities as a result. The late afternoon and evening hours were set to accommodate the public by allowing for after hours scheduling.

But case filings for CPOs grew another 76% in 2007 – from 588 filings in 2006 to 1,032 in 2007. And general magistrates were once again conducting hearings in an effort to keep up. So, the court placed Ms. Erdy on a full-time basis in May, 2008. Her hearing hours are now 11 a.m. to 8 p.m. Mondays through Thursdays and 8 a.m. to 5 p.m. on Fridays.

Filings have continued to increase in 2008 and Atiba Jones, the court's executive director, worries that even more dramatic increases might be in store during the summer as gasoline prices, evictions and foreclosures keep heading upward while the economy continues to sink.

In January, 2007, the court took over the administrative functions of CPO filings from the Clerk's office. In addition to the part-time magistrate, the court hired two CPO liaisons to coordinate the process with petitioners, to assist in completing all necessary paperwork and to schedule all the hearings. A support staff member was also hired to prepare all correspondence, file all entries and assist the magistrate.

Liaisons accompany the persons seeking CPOs to the common pleas judge who is serving as Duty Judge for the week and an ex parte hearing usually results in a CPO being issued. However, a hearing is scheduled the following week before the magistrate. The CPO respondent (the person accused of causing or threatening harm) is notified of his or her right to attend and be heard.

CPOs are seen as a helpful tool in fighting domestic violence because police are much more likely to make an immediate arrest if a CPO is in place and a respondent is violating the "stay away" provisions.

CLERK HAS CAUGHT UP

The Common Pleas Clerk of Courts Office has recovered from a filing back-up that plagued operations in mid-winter, office leaders reported.

In mid-March, Clerk John O'Grady came to a monthly judges meeting to report a backlog of two to three weeks in getting case data inputted to the Franklin County Justice System (FCJS) which is accessed by computers throughout the court. The office was also several weeks behind in getting documents into their case files. The judges knew a backlog of some sort was occurring, but O'Grady promised that overtime and new hirings would solve the problem by early April.

A few weeks later, David Migliore, chief deputy in the office, reported that data was being inputted to the computer within three days and documents were making their way to the proper files within five days.

"Several adverse things happened to us all at once at the end of the year," he commented.

The office began "imaging" documents at the beginning of 2007 and they became available through the FCJS at the end of the year. Meanwhile, the data entry staff had not been able to keep up, Migliore said. So, overtime was authorized for 10 to 20 employees to be working at least six hours each weekend for several weekends, and three additional data entry operators we permanently hired, he explained.

Lack of space has been a big problem in handling documents, Migliore noted. "Due to the increase in cases filed – and the increase in foreclosure cases in particular – we have outgrown the space created to store the files." Files had been stuffed together so tightly it took a while just to get a file pulled out, he continued.

The clerk's office was able to obtain new space on the fifth floor of the Hall of Justice and 18,000 files from 2004 and 2005 cases have been taken from the third floor to the new storage area. That has eased the space problems and created a better work flow for the records room staff. Also, two records management clerks have been added to the staff, Migliore said, and he believes the new employees in the office will enable the office to keep current.

FORECLOSURES KEEP CLIMBING

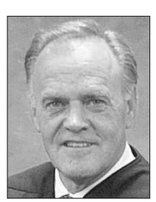
In 1995, a total of 1,956 foreclosures were filed in the Franklin County Common Pleas Court.

Last year, that number hit 9,000. They are running at 1,000 a month this year making it quite possible for the figure to pass 12,000 by year's end.

Historically, foreclosures have accounted for about 40% of the civil docket. But each judge has been getting about 100 new civil cases every month and about two-thirds are foreclosures.

And each judge continues to get about 50 new criminal cases each month.

David_Cain@fccourts.org



The Honorable David E. Cain Franklin County Common Pleas Court

Practicing Law

IN THE FRANKLIN COUNTY MUNICIPAL COURT

By Sallynda Dennison

If you have never been to the Franklin County Municipal Court, here is what you can expect on any given day. On average, four hundred forty one new criminal, traffic, and environmental cases are filed each day. There is plenty of work to do if you like that sort of thing and I do. It is very satisfying, relatively low stress (life in prison is not an option) and dare I say it...fun. The various personalities of the defendants, prosecutors, judges and other people, including bailiffs (that's for you, Rob), involved on a day to day basis make working there very enjoyable and once in awhile, you can actually make a difference.

First, here are some basics about the Franklin County Municipal Court. There are fifteen sitting judges, each handling criminal, traffic and civil cases. One court focuses mainly on environmental cases. There is a mental health court and four arraignment courts. Criminal complaints and OVIs, issued by summons and/or where a bond has already set, are arraigned in Courtroom 4c. Defendants in custody are arraigned in Courtroom 4d. All traffic cases, except OVIs, are arraigned in Courtrooms 1a and 1b. The fifteen judges rotate weekly between Courtrooms 4c, 4d, and duty. Magistrates handle the 1a and 1b arraignment courts.

Most days, Courtroom 4c handles hundreds of the cases. The assigned prosecutor makes an honest effort to resolve as many of the cases as possible. Two employees of the Prosecutor's Office check defendants in and direct the cases where appropriate. Three or more public defenders attempt to work out the cases for those who qualify. A bailiff assists the judge and a clerk works to process paperwork as fast as is humanly possible, usually working long after everyone else has left. The ability to multi-task is a plus for the judges.

Courtroom 4d has a very different atmosphere. The defendants are held on a variety of charges. They are brought in by the deputies, three or four at a time, to stand by the wall. One prosecutor reads the charge. A variety of other people are there with various information concerning the defendant or the charge. Three public defenders are present to help with unrepresented defendants. Bonds are set. Defendants get to make bond. Cases move forward. The court operates six days per week.

Duty judges deal with a myriad of issues that come up and are not otherwise assigned to a judge already. They do everything from review and approve search warrants to perform weddings. They are on duty 24/7 for their assigned week.

All misdemeanor cases from Franklin County, except those in the various mayor's courts, are handled in the Franklin County Municipal Court. There is an assistant city attorney assigned to each courtroom who handles all but a few of the jurisdictions. Hilliard, Reynoldsburg, Gahanna, Brice, Dublin, New Albany, Grandview and a few others each have their own prosecutors that appear in the Franklin County Municipal Court going from courtroom to courtroom. Additionally, the City Prosecutor's Office has a domestic violence team. Every six months the assistant city prosecutors are rotated to different courtrooms.

The unresolved cases are randomly assigned to one of fourteen judges. The court has a single assignment policy. This means that if a defendant has more than one case, all cases are assigned to the same judge even if the cases arose from separate incidents. On a criminal/traffic day, a judge may have on average fifty to seventy cases.

We are fortunate, in Franklin County, to have a mental health court. Those defendants who pick up minor cases due to mental health issues can be transferred to the mental health court. This court along with a group of mental health experts works with defendants to resolve their issues so they do not continue in a cycle of picking up cases.

My pedometer on any given day shows that I walk two to three miles per day in the courthouse. My personal best is ten cases in one morning. I know of others who have accomplished more. Attorneys are able to handle multiple cases due to the cooperation of the court.

Cases move very quickly in Municipal Court due to speedy trial issues. Getting all of the cases scheduled with dates that work for all the parties and the court, within speedy trial limits, and for cases in which time is waived, within the Supreme Court reporting limits can get very complicated. It is rare, however, that a case has to be dismissed for speedy trial issues.

The cell phone is an indispensable tool when handling multiple cases in a given morning. Whether it is hearing from nervous clients, looking for missing clients, searching for prosecutors that are not assigned to a courtroom or calling your office for information, make sure you have plenty of cell minutes. You are going to need them!

While it might sound like utter chaos, it's not. While any system can be improved, the Franklin County Municipal Court, prosecutors, and attorneys work together to make the system function as efficiently as possible. Feel free to visit. Pick a courtroom and see for yourself.

In 2007 there were in excess of 161,000 new filings. Exact figures for 2007 are 32,549 criminal complaints, 122,664 traffic cases and 5,969 environmental cases. Figures provided by the Franklin County Municipal Court Clerk.

srdennison@msn.com

Sallynda Dennison, Dennison Law Office

MEDICARE SUBROGATION

NEVER LET THE "SLEEPING DOGS" LIE

By Robert W. Kerpsack

It has probably happened to most us involved in personal injury litigation. After countless hours of investigation, discovery, posturing, and negotiation, a settlement of a Medicare recipient's personal injury or wrongful death action is finally reached. All of the lawyers on the case are elated. The plaintiffs' lawyer is happy because a long-overdue contingent fee appears to be on the way. The defense lawyer is happy because the claims adjuster – who acts like their own personal funds are being spent on the case – will finally stop grumbling about the defense costs being too high. Even the trial judge – who has just been relieved of having to endure a full day of testimony about the plaintiff spouse's substantial loss of consortium claim – is happy. This settlement euphoria is often short-lived, however, when everyone realizes that Medicare has a statutory lien against the settlement proceeds, and there is no one to contact to quickly verify the amount of the lien.

Personal injury claimants always want to know the amount of their net recovery, after the claims against the gross settlement proceeds are paid. As a plaintiffs' lawyer, I have struggled many times with the uneasy feeling of not being able to quickly advise a client what portion of their personal injury settlement belongs to Medicare. My uneasiness accelerates in cases of compromise settlement, where the issue of liability or injury causation is hotly contested. From attending continuing education courses on subrogation, I know that 42 USC 1395y(b)(2)(B)(iii) creates a right of subrogation against a Medicare recipient's personal injury or wrongful death settlement. I also know that an express "formula" for calculating a Medicare lien is set forth within in 42 CFR 411.37(b). In cases where the Medicare payments exceed the settlement amount, however, the lien formula can result in the Medicare recipient receiving nothing, with only the plaintiff's lawyer and Medicare being paid. What personal injury claimant in their right mind is going to agree to such a result? From time to time, Medicare does waive liens when enforcement is "against equity and good conscience" (see 42 CFR 405.358); however, the waiver application process can tie-up a disbursement of the net settlement proceeds for a year or more.

Why not just disburse a Medicare recipient's personal injury or wrongful death settlement without notifying Medicare? Chances are Medicare will never find out about the settlement. Unfortunately, Medicare recipients, their lawyers, and the liability insurers paying the settlement are all individually liable for reimbursing Medicare, pursuant to 42 CFR 411.24(h) and (i). These federal regulations can send a chill down the spines of plaintiffs' lawyers; however, most liability insurers can easily protect themselves from an unliquidated Medicare lien simply by issuing a single settlement check payable to the plaintiff, the plaintiff's lawyer, and the United States of America. The first time I received such a settlement check, I was in for a rude awakening when it came time to deposit the check. When I tried to find someone at Medicare who could provide me with express authority to endorse the check on behalf of the United States, I quickly realized that no one in the entire federal government is empowered with such authority. The Medicare folks suggested only that I have the check endorsed by the other payees, and send the check to them. When they determined the amount of the Medicare lien (which I estimated to be only a small percentage of the settlement), my client would receive a refund for any "overpayment," a process that could take years! But my client needed the net settlement funds immediately. Luckily, I was able to persuade the liability insurer to issue a new check without the United States' name, in return for my personal indemnification. A substantial portion of the net settlement proceeds was then disbursed to the client, holding in trust the estimated Medicare lien amount. About one year later, I finally received confirmation that the Medicare lien amount was less than the amount being held in trust.

In today's personal injury litigation climate, fewer and fewer liability insurers seem to be inclined to ignore unliquidated Medicare liens in return for an indemnity agreement offered by the plaintiff or by the plaintiff's lawyer. With some forethought, however, Medicare subrogation can still be managed appropriately and expeditiously. In litigation cases, Medicare can be named in the Complaint as an interested party plaintiff or defendant, pursuant to Rule 19 of the Ohio Rules of Civil Procedure. The Assistant U.S. Attorney entering an appearance in the action on behalf of Medicare is going to be equipped to quickly liquidate and obtain authority to settle the Medicare subrogation lien. Of course, Medicare subrogation is a federal question; however, the U.S. Attorney in Ohio rarely removes state court personal injury actions to federal court. Even in non-litigation personal injury and wrongful death cases, local U.S. Attorneys' offices can be very helpful in facilitating and streamlining the process of liquidating and settling Medicare liens.

In working on resolving Medicare subrogation claims, I have come to learn that the regional offices of the U.S. Attorney in Ohio have an established policy and practice of recommending that Medicare take no more than one-third of a gross personal injury or wrongful death settlement, regardless of the amount of the Medicare lien. Obviously, there are exceptional cases where the recommendation of the U.S. Attorney is going to be rejected; however, it has been my experience that it is usually safe to disburse a Medicare recipient's settlement, holding one-third of the proceeds in trust until the Medicare lien can be verified and resolved. Frequently, a telephone call to the local Assistant U.S. Attorney handling Medicare subrogation is all that is necessary to obtain an agreement or consent that one-third of the settlement proceeds will be held in trust to cover the potential Medicare lien.

In conclusion, verifying the amount of a Medicare subrogation lien against a personal injury or wrongful death settlement can be a slow and frustrating process. I substantially reduce my own frustration by joining Medicare as a party in litigation cases, and by establishing working relationships with the local Assistant U.S. Attorneys who handle Medicare subrogation. I never let the Medicare subrogation "sleeping dogs" lie. These "dogs" can awake to bite the Medicare recipient, their lawyer, and the liability insurers paying the settlement.

bob@rwklaw.com

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Robert W. Kerpsack

119 Appeals

ARE ALL DECISIONS ENTITLED TO DEFERENCE BY THE JUDICIARY?

By William J. Browning

The 119 process is a quasi-judicial process utilized by state agencies for purposes of handling disputes of decisions issued by agencies. Whether the agency happens to be the Environmental Protection Agency, the Fire Marshal, or the Ohio Department of Job and Family Services, their decisions are subject to a hearing process that has a stated goal of providing a fair process for reviewing those decisions. This author's experience has been almost entirely within the auspices of the ODJFS, and as such, the comments and statements expressed herein are directed towards that agency process. This author has also had some experience with hearing officers within the Fire Marshal's processes and of the Board of Mental Retardation and Developmental Disabilities. There are significant differences in attitude and processes within those agencies.

It should be noted that the Ohio State Bar Association has suggested that a separate administrative hearing division outside the control of the separate agencies be created through which all administrative processes be taken; however, the legislature and successive administrations have rejected that proposal. This author believes that such a reform is essential. In other states, lawyers employed by the administrative hearing agencies, known as administrative law judges, actually listen to evidence, allow for constitutional processes, and are truly outside the control and dominion of the underlying agency.

The processes employed by the Ohio Department of Job and Family Services, known as "state hearings," are an example of an administrative process gone awry. The OSBA has specifically met with the hearing section and lodged complaints with the Governor's office, all to no avail. While this list is not entirely complete, it describes the highlights of the administrative abuses, which have been systematically instituted by the ODJFS.

Subpoenas — The Ohio Administrative Code provides that appellants are entitled to the issuance of subpoenas; however, the ODJFS, through its hearing section, refuses to issue subpoenas. Clearly, subpoenas requiring the attendance of the Governor or other elected officials may be rightfully denied; however, this hearing section does not issue subpoenas for caseworkers, supervisors, state medical personnel who have issued opinions regarding disability, or other third parties. The statutory procedure involves the attorney requesting the subpoena and providing the hearing section with the address and contact information. At the hearing, the hearing section notifies the attorney that they are not issuing a subpoena, typically stating that the witness is irrelevant to the process. In one case (*Wolff v. Ohio Department of Job and Family Services, 10th District Court of Appeals* Case No. 05APE-06-568), the agency personnel who examined Mr. Wolff issued a report, and counsel for Mr. Wolff wished to cross examine that witness as there were certain disparities between an earlier report and a second report. The hearing section refused to subpoena that witness, and the agency purposely made sure the witness was not available that day to testify. The agency hearing officer found for the agency based solely upon that report. While the Common Pleas Court judge found that this was reversible, the Court of Appeals disagreed, finding such deprivations were not all that important.

Hearing Officers are Not Decision Makers — The hearing officer appointed to hear the case through the ODJFS listens to the evidence presented, listens to the arguments, and reviews the briefs and exhibits. The case is then submitted to a supervisor who was not present at the hearing and who most likely did not listen to the hearing tape or review the written evidence. That supervisor then issues the decision. This process represents a significant change, as in the past, hearing officers were permitted to issue their own decisions that did not require the approval or rewriting by a supervisor. Requests from counsel to review a copy of draft decisions have been denied, and counsel is not permitted to participate in discussions between the hearing officer and their supervisor.

Deficient Notice — While a portion of this deficiency has been remedied, it is very common for caseworkers to issue a denial or a termination of Medicaid benefits, citing either a manual code section, which is not part of the Ohio Administrative Code, or issuing a general denial saying that the applicant was "over resourced." At the actual hearing, the caseworker supplies an "appeal summary," which usually contains separate and distinct code sections not referenced in the original denial. In other words, applicants who appeal decisions arrive at the hearing only to find the code section that was initially cited in the denial was not the code section upon which the caseworker relied.

Ex Parte Communications — The hearing section, and particularly supervisors, regularly discuss cases and specific legal issues with the public policy wing of the ODJFS.

The end result to these manipulations is that many elderly and disabled clients who have never had any involvement with the legal system are submitted to a process that appears to be biased and unfair. While they may not be able to fully outline why it seems unfair, by attending a hearing, listening to a hearing tape, or reading a hearing decision, they come to the conclusion that something seems amiss. Lawyers who practice in the administrative area and who deal with an agency that manipulates its processes find it difficult to defend the processes.

The judiciary should serve a role in curbing these administrative abuses. The courts should take seriously technical and constitutional arguments proffered by counsel in these cases rather than simply finding that nearly all agency decisions are supported by "reliable, probative evidence."

wbrowning@elderlaw.us

William J. Browning, Browning & Meyer

Rocky and 19,599 Buddies GO DOWN IN '22

By Bruce Campbell

In my current gig, I don't often get down to the Houses of the Black Robes on Lower High Street. Occasionally though, I have a nostalgic pang for the fragrance – that certain eau de justice – of law being freshly ground, packed and shipped out the front door (or in some cases out the loading dock and onto the choky bus).

Moved by one of these impulses on a recent afternoon, I did a leisurely lap through and around the H of J campus including the great chasm from which will arise the new, "transparent" dispensary of lex ordinandi. On the way back I went past but not in the Jury Room (being on duty). The trip did not disappoint.

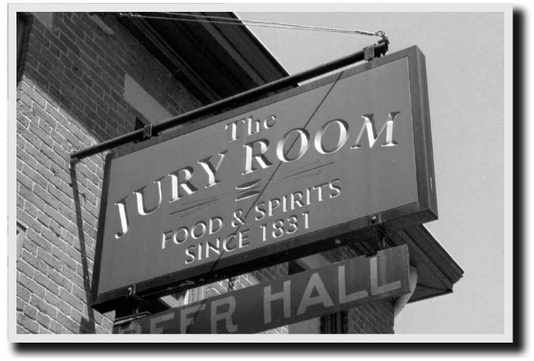
In the cement "park" (cum mobile TV transmitter vehicle camping area) that graces (?) the southwest corner of Mound and High, I lingered in the considerable shade created the statue of the ample Ben Franklin. I couldn't suppress a sardonic thought about the fact that our rectitudinous county is named after an internationally-known serial philanderer?

I then wandered over to a two-sided, newish historical marker planted in a meager row of sickly bushes. I wanted to confirm my cynical assumption that its subject matter would be a crashingly dry recitation about some demi-consequential event or, worse yet, a paean to a dead pol better remembered in bronze than in being. Well, nail my jockey shorts to the mailbox if this sign wasn't one of the best bits of outdoor imagery since Burma-Shave signs (with the notable exception, of course, of those five-story photographs of knock-out models that some beautician has so thoughtfully placed on a building facing Third Street traffic for my distraction while driving to work each morning).

The aforementioned plaque, furbelowed with buckeyes and certified by the Ohio Historical Society, is dedicated to one Johann Christian Heyl, 1788-1877, one of the first fifteen settlers, and first of German/Lutheran extraction, to plant themselves in this area — after the relocation ("rendition" in contemporary terms) of the original inhabitants.

Heyl apparently was Type-A to a fault. He was, in turns, baker for troops in the War of 1812, church founder, major benefactor of a theological seminar that morphed into Capital University, City Councilman, County Treasurer, Common Pleas Judge, School Board Member, Fire Chief, and operator of a stop on the Underground Railroad. He may also have sold Amway products.

But the phase of Heyl's life that really caught my attention was his 28-year stint as the publican of a tavern, the Franklin House (a/k/a The Swan), situated at Rich and South High. The joint was convenient to National Road travelers and to the Ohio General Assembly (which, interestingly enough, met at that time in a small building, made of bricks composed in part of human bones dug from a burial mound that had been at the



corner of South High Street and the aptly named Mound Street).*

Heyl's pub was a hub of local commerce, conviviality and, no doubt, some connivery. The tavern (which pre-dated the one that is now the Jury Room by a decade or so) was also the site for major civic events, and that brings us to the nib of this discourse.

Quoth the marker, "One such notable event was the Great Squirrel Hunt. Heyl organized the hunt at a time when squirrels were overrunning Columbus and farmers' crops were threatened. On Saturday, August 31, 1822, at two in the afternoon, hunters gathered at Franklin House and within hours collected 19,600 scalps."

That short passage fairly screams out for attention. Could this possibly have happened, or is this some elaborate hoax erected on a recent April Fool's Day by folks from the Other Paper. While the provenance of the information on the sign is vouchsafed by the Ohio Historical Society, not the Ohio Urban Legend Society, some fact checking seemed in order.

Mr. Google magically produced a direct quote from story in the Columbus Gazette of August 20, 1822 captioned "Grand Squirrel Hunt." The article reported, "The squirrels are becoming so numerous in the county as to threaten serious injury, if not destruction to the hopes of the farmer during the ensuing fall. Much good might be done by a general turnout of all citizens whose convenience will permit, for two or three days, in order to prevent the alarming ravages of those mischievous neighbors. It is therefore respectfully submitted to the different townships each to meet . . . in a hunting caucus. . . ." In its next edition the Gazette reported that the hunt had indeed produced 19,660 scalps (60 more than reported by the OHS marker, we should note). The article concluded with a

Around the Court

boast. "We think we can safely challenge any other county in the state to kill squirrels with us."†

In this era in which we are besieged by terrorists, drug gangs, gas prices, run-amuck public officials, and Canadian geese that never go back to Canada, it seems hard to envision the squirrel qua public menace. The 1822 reality, however, was that as the forests were leveled for farmland, vast groups of bushy-tailed marauders were migrating to a more bountiful habitat. One observer is quoted as saying, "They were evidently under some leadership and knew where to go; perhaps [they] might have sent out advance couriers on tours of exploration and, guided by their reports, had gathered as a mighty host with banners under some chosen Moses among them, were moving toward the Promise Land."

What about the logistics of this hunt? How many folks assembled for the great shoot (Columbus then consisted of about 1,500 souls, half of whom were under 16)? However did they manage to go out, blast 19,660 furry beasts "within hours" and fetch them all back to the tavern? Did they really stop to dissect the "scalps" of all those victims? What happened to all those carcasses? Who counted them? If Dick Cheney had joined the hunt, how many Columbus lawyers (there were at least 4 at that time) would have been wounded that day? Unfortunately, these mysteries will linger on for lack of uTube documentation.

An image may help to put the magnitude of this event in perspective. If Heyl and his posse had strung their trophies by their tails on a clothesline at six-inch intervals, that rope would have been 1.9 miles long and would have stretched from the Franklin House nearly to where Franklin Park is today. That monument would have made Franklin University's Big Blue Mortarboard now suspended over Rich Street pretty darned puny by comparison.

This is a literal call to arms. We cannot allow ourselves to be outdone by past inhabitants of this town. Please join the "Great Hunting Caucus of Ought Eight." Meet at the Jury Room on August 31st at 2:00 P.M. to help track down every last undocumented Canadian Goose in the county. Bring clothesline. Don't bring the V.P. Don't mention any of this to P.E.T.A.!

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* *Chester, Car A Fragile Capital: Identity and the Early Years of Columbus Ohio (Ohio State Univ. Press)*

† *Martin, W.T., History of Franklin County: A Collection of Reminiscences of the Early Settlement of the County (1858).*

bruce@cbalaw.org

Bruce Campbell,
Columbus Bar Counsel

IMMIGRATION
AS A PRIORITY POLITICAL ISSUE
A CONVERSATION WITH *DAVID S. BLOOMFIELD*

By Nelson E Genshaft

With some 37 million foreign born people now residing in the United States, our national immigration policy has become a political issue of historic proportions. Presidential candidates debate it, with most Republicans taking a hard line and advocating tougher border security, and the Democrats tentatively testing the water of immigration reform. The fact is that of the 37 million foreign born, about one-third are naturalized citizens, about one-third are legal permanent residents and about one-third, or some 12 million, are illegals that either entered without permission or overstayed their visas. This has become a serious problem, and one that not only brings into play the issues of border patrol and security, but also our public services like schools, hospitals, local police and fire protection. A substantial number of these illegals are part of the immense service industry in this country. Many argue that they are necessary for the survival of the food, hospitality and landscaping services, to name only a few.

As a New York Times editorial (12/30/2007) asked: "What should be the role of immigrant labor in our economy? How does the country maximize its benefits and lessen its ill effects? Once the border is fortified, what happens to the 12 million illegals already here? Should they be expelled or allowed to assimilate? How? What about the companies that hire them?"

To find some answers to these questions, I asked David Bloomfield, an immigration lawyer at Bloomfield & Kempf and professor teaching immigration law at the Moritz College of Law, to comment.

What are the real problems in pushing comprehensive immigration reform that addresses not only the security issues, but also the questions of employment policies for foreign workers, family unification and solving the undocumented resident problem?

In a word, emotion. Everyone recognizes the problem but our elected representatives just do not seem to be able to "get along" with each other. Added to that is the push-pull of some very fragile political alliances which easily break down. As a result we are in this mess. In the abstract everyone is for reform, family unification and solving all of the other problems. A vocal but substantial minority wants to close our borders and throw all foreigners out. Another substantial minority wants to open all borders. This country needs a leader or leaders to step forward and work out a compromise between the two. Security has a tendency to be used as merely a codeword for anti-immigration, and this remains the real problem. The U.S. has had major security threats in the past, during World War II and the Cold War to name only a few, yet we were able to forge a plan that worked. History needs to repeat itself. Hopefully the new Congress and the next President will get the job done. I believe it is eminently doable.

What are the real border security issues? Is it staffing, building a longer and higher fence, more penalties for illegal entry?

We have the same borders as always, but now there is a fear of "Terrorists." Building a fence would be a colossal waste of money, as the determined will find a way under, over or around it. More intense personal border scrutiny and more enforcement will make it harder for legal immigrants and visitors to travel to the U.S. Closing the borders makes no economic sense. The United States economy depends upon the free flow of commerce and people across its borders. What is needed is better technology to monitor the border by air, land and sea. More people or restrictions will not do the job; rather, we need more reliable documentary evidence for lawful travelers and more efficient technology to facilitate "legal" travel as well as to monitor the "illegal" travel. As a country we tend to spend our limited financial resources on people and costly visible items like fences and walls rather than technology. Something as conceptually simple as security data sharing between jealous federal agencies has already proven to be both valuable since 9/11, while difficult to implement. Similarly, machine-readable passports, single digit fingerprinting, infra red scanners, satellite imagery, and face recognition technology are far better tools in the challenge to manage border security, and they are much better than fences, walls and more agents.

Would it make sense to have a program that provides a road to citizenship for illegals, or would that amount to an "amnesty" provision that is politically impossible?

Before reaching the far more elevated status of citizenship, there must be taken a first step on the road to a legal status, such as permanent residency (Green Card), or even a hybrid such as a temporary resident status subject to a future permanent enhancement. There is historical precedence for this. Citizenship may then be sought later for those who qualify, but the immediate issue is providing a status to lawfully remain and work in the U.S. Amnesty is a bad word and any mention of it will poison the effort. Rather, we need to prioritize the matter into family and employment categories and restore Section 245(i) of the Immigration and Nationality Act, as well as update Section 249 of the INA, also known as the Registry. In a nutshell, illegals who have a specific family relationship or employment sponsor could file for permanent residence status by paying a fine. This was acceptable from 1998 to 2001, and worked well under Section 245(i). It prioritized those who could become legal and those who could not. Registry allows for those here as of a certain date and of good moral character to obtain a Green Card. As of now, the priority date is before January 1, 1972. This needs to be updated to a more reasonable date. Doing so would help many who came here when they were very young and did not even know they were illegal until they tried to go to college or obtain a passport for travel. These are the same people that the DREAM Act was meant to help, but that legislation could not get through Congress because of the word amnesty. I believe that this tweaking would be a just and proper compromise and that amnesty, which was invoked in legislation in 1986, was not workable for a variety of reasons.

The 1986 Act stated that anyone here illegally as of 1982 could file for "amnesty" and obtain a Green Card. That led to massive fraud by individuals attempting to prove the minimum requirements that they were in the U.S. illegally as of the 1982 effective date. (If someone came without inspection or papers how do you effectively prove the date of entry?) The law was also plagued by a lack of planning and regulations. This meant that the Immigration service had no training or ability to cope with the large number of applicants who waited to the very end of the one-year date for filing. This led to many lawsuits that took almost twenty years to complete. The huge amount of resources dedicated to the matter took away from the legitimate business of government. Any true amnesty will bring with it tremendous anxiety and people who will attempt to fit within the law, but who do not really qualify.

The experience from 1986 demonstrates that a cottage industry of fraudulent documents was launched and continues to this day. Further, only half of those eligible applied because of lack of trust of the agency that enforces the law being involved. Also, many did not get the word at all and therefore did not file. The law was great for those who did qualify, especially those applicants from Mexico who took advantage of it, but it was a learning experience. Today, Sections 245(i) and 249 are more workable because they have been in place and have definitive methods of proof required.

What are the real needs for foreign-born employees in this country, and are they solely at the low economic end of the scale in the service industries, or is there a need for highly educated and skilled employees as well?

The need is critical at both ends of the economic ladder. The need for highly skilled people is enormous. There is a program (H-1B) that allows in new "professional" employees on an annual basis with a quota of 65,000. The opening date for filing is April 1, with a start date of October 1. In the first week of April 2008 there were approximately 165,000 applications, resulting in an arbitrary lottery. Only legitimate employers needing new employees (Universities and their affiliates as well as extension filings are exempt) are eligible. The H-1B is a temporary visa, not permanent. This illustrates the need. As an aside, the high tech industry has been begging Congress to increase the quota and has both threatened and moved jobs overseas because of this problem. On the other end of the ladder is the temporary labor worker (H-2B) program. It also has a quota and a complicated filing procedure yet the quota is consistently met within days of opening up each six-month period. Of course, this other end of the ladder also includes the millions performing some of the most unskilled and least desirable jobs in our national economy.

We had the Comprehensive Immigration Reform Act of 2006 (SB 2611) that was passed by the U.S. Senate in 2006. Why did that bill die, and what do you see for the future of immigration reform legislation?

The bill died because it was unworkable. There was no real support for it from those in the know, and the vocal minorities were afraid to politically support it. It was a bad bill because it required those illegals who qualified to be here temporarily to first leave the U.S. to become permanent. Under our current system, this just would not have happened. As to the future, we need members of Congress who follow the lead of Everett M. Dirkson and Tip O'Neil to overcome the parochial interests of the few and forge reform legislation that serves the majority.

neg@columbuslawyer.net
dbloo@msn.com

Nelson E Genshaft, Strip Hoppers Leithart McGrath & Terlecky

The fact is that of the 37 million foreign born, about one-third are naturalized citizens, about one-third are legal permanent residents and about one-third, or some 12 million, are illegals that either entered without permission or overstayed their visas.

THE H-1B "CAP"

HARD TIMES FOR U.S. AND DIFFICULTIES EMPLOYERS FACE IN OBTAINING HIGHLY-SKILLED FOREIGN NATIONALS

By David W. Cook and Robert A. Harris

U.S. employers can face many practical difficulties in attracting and hiring highly-skilled foreign national workers. Often these difficulties center on visa and immigration-related challenges facing employers who seek to hire highly-skilled foreign nationals.

The H-1B visa is the most common nonimmigrant (temporary) visa category used by employers to employ highly-skilled foreign nationals. H-1B visa status is available to employ professional workers (generally those with bachelors or higher degrees) in specialty occupations. The visa program helps fulfill the need for professional workers essential to both economic development and the ability of employers to compete in a global environment. Perhaps the most frustrating immigration obstacle for employers trying to obtain these highly educated professionals is the H-1B visa "cap."

In 2004, the annual number of new H-1B visas available was decreased from 195,000 to 65,000. This remains the cap today, although an additional 20,000 new H-1B visas are available annually for workers with advanced degrees (masters or higher) from U.S. colleges or universities. However, even with this additional allotment for advanced degree workers, during the last few years the H-1B cap has been reached within a matter of days, resulting in numerous U.S. companies not being able to hire necessary highly-skilled foreign nationals.

In fact, this year the United States Citizenship and Immigration Services received over 163,000 new H-1B visa petitions, including approximately 31,200 advance degree petitions. Because the demand so exceeded the supply, the USCIS subjected these petitions to a random lottery to determine which petitions would be selected under the cap. These are not jobs being taken away from U.S. workers in favor of cheap foreign labor, and the need for a random lottery to determine if U.S. employers can hire these highly sought-after, highly educated foreign nationals demonstrates clearly the need to reform the H-1B program.

Even if a U.S. employer is fortunate enough to obtain an H-1B visa on behalf of a foreign worker under the cap, or if the worker happens to qualify for another work-authorizing nonimmigrant visa status (e.g., L-1, O-1, etc.), the worker still must obtain a visa stamp from a U.S. Embassy or Consulate abroad in order to enter the U.S. in that status. (If the foreign national is already in the U.S. and a change of status was approved, he or she must obtain a visa stamp from a U.S. Embassy or Consulate the first time they travel abroad after approval of the visa petition.) This requirement raises an additional and often frustrating set of issues associated with visa issuance abroad.

In November 2007, the Department of State rolled out the Petition Information Management System. While perhaps well-intentioned, PIMS has often resulted in significant delays in visa processing. Under PIMS, nonimmigrant visa petitions are sent to the Kentucky Consular Center after approval by the USCIS. The KCC enters relevant data from the petition into PIMS and scans in key documents from the petition. The KCC also performs database checks looking for evidence of fraud, violations, or other problems, and records its findings in PIMS. When the Embassy or Consulate is ready to issue a visa based on an approved petition, it must confirm the approved petition in PIMS. If the Embassy or Consulate does not find a petition in PIMS, it must send an email to the KCC requesting confirmation of the petition approval. Since U.S. Embassies and Consulates will not grant a visa until KCC enters the petition information in PIMS, delays are not uncommon and continue to occur. Coupled with delays that may also be occasioned by required security clearances, obtaining a visa abroad has become a process often riddled with uncertainty.

Another difficulty faced by some nonimmigrant visa holders is the fact that their spouses are not permitted to be employed in the U.S. absent an independent basis for work authorization. For example, spouses of H-1B visa holders who generally enter the U.S. on dependent H-4 visas are not permitted to obtain work authorization in the U.S. while in H-4 status. This can cause tremendous stress in the foreign worker's family and may deter high skilled foreign nationals from accepting employment.

Once a highly-skilled foreign national enters the country, many employers consider sponsoring an immigrant visa ("green card") application on that person's behalf. However, similar to the H-1B program, current U.S. immigration regulations limit the number of immigrant visas available each year. In most cases, due to processing delays, the unavailability of immigrant visa numbers, or a variety of other potential reasons, several years could pass before the foreign national is eligible to obtain a green card. Furthermore, the limits on the number of immigrant visas available is divided on per country bases. Thus, foreign nationals from countries whose citizens have demonstrated a high demand for green cards (particularly China, India, and the Philippines) may have a particularly long wait for a visa.

Although the U.S. has a vast and flexible labor market, an abundance of leading-edge multinational corporations and world-class universities, the we face growing competition globally. As such, the government needs to revamp immigration policies to make them more responsive to the needs of the economy and its employers, particularly with respect to the unnecessary obstacles to the hiring of the highly-skilled. Further hindering the flow of highly-skilled foreign nationals to the U.S. will only continue to adversely affect the nation's competitiveness and its global leadership.

dwcook@vorys.com
raharris@vorys.com

David W. Cook and Robert A. Harris, Vorys Sater Seymour and Pease

A Happy End To A Beginning

By Orsolya Hamar-Hilt

It was never an easy task to become a citizen of the United States. It appears that post 9/11 it is even more difficult. The immigration laws are changing. The whole system has been changed. I am not sure for the better, but for sure, it is more bureaucratic than ever.

When I started on my immigration procedure in July 2000, I filed my papers with the Immigration and Naturalization Services (INS). This office later became the United States Citizenship and Immigration Services (USCIS), a part of the Department of Homeland Security. There are four service centers throughout the country where the initial petitions for any immigration requests have to be filed. The centers are in California, Nebraska, Texas and Vermont. There are local offices in each state, however, it appears that the majority of the work is done with these service offices.

There is no contact information, no telephone numbers for these offices. (In the past there was an 800 number which was continuously busy. It took a great amount of luck to talk to someone. When I could talk to a representative the answer differed each time.) Unless, an attorney is involved, the Petitioner cannot get any information of the status of the case. Recently, the USCIS organized a website where a file number can be entered, and supposedly, it gives information about the status of the case. I could never find any useful information on that site. It is hardly ever updated and mostly what it says is not helpful.

In the year 2000, I started on my immigration process. The first step was to file for a Petition for Alien Relative document (I-130), my Application to Register Permanent Residence/ Adjust Status (I-485) and my employment authorization request (I-765) at the same time. All of these were sent to the Nebraska Service Center. (Ohio belongs to this Service Center). Shortly after these filings, my employment authorization was approved, and I received my social security number. I was confident my case was on the right track. I was wrong.

In June 2001, I had my interview with an officer at a (so-called) satellite office in Columbus. The officer asked me, after the interview, to re-file my I-485, Permanent Resident Request Form, because he could not find it in the file. I complied with his request and the same day re-filed the document. In December 2002, my permanent resident status was approved, and I received a stamp in my passport. The Cincinnati district office assured me that my I-551 (commonly known as green card) would be mailed within four months of this approval.

I never received the card. From April 2003 until January 2005, I made monthly trips to Cincinnati because the Cincinnati office was responsible for all the immigration procedures. (The Columbus office did not accept applications or any documents until 2005.) The answer was the same each time. The Nebraska office has not approved the case, therefore, a green card cannot be issued. I was overly surprised about this because the stamp in my passport contradicted this statement. It said my case was approved. I left the country a few times and was allowed to re-enter with a stamp. At the border, there never was a flag raised that something was wrong with my status. I never understood how so many mistakes could be made.

In 2005, I applied for my citizenship. I filled out all the papers and paid the fees. Although I have been living in the United States now for five years and am married to an American citizen, my application was denied.

This time I made a shorter trip – only going to the Columbus office. I explained what had happened to me. The officer seemed understanding, but what he had to say did not bring a smile to my face. He told me my file was lost a long time ago. As far as they were concerned, I had never lived in this country, and I needed to start the whole process all over again. I simply could not believe what had happened to me.

I hired an attorney who also had a difficult time believing my story. After a quick follow-up, he was told the same thing. It was the USCI's fault, but there is no other solution except to start a new process.

In January 2005, my green card was issued. It was exactly three years later than it should have been. Another three years had to pass before I became eligible to file for citizenship. In October 2007, my citizenship request was filed. Surprisingly, my interview was set for February 21, 2008. I certainly did not expect it so quickly. The officers who worked in the Columbus office remembered me. They knew exactly what had happened to my case. They told me this time they would get it right.

The USCIS administers the U.S. Citizenship Civics exam. This is a required step in the naturalization process, and all applicants (with some exceptions) must pass the citizenship test before taking the Oath of Allegiance and officially becoming United States citizens. The questions are usually selected from a list of 100 sample questions that prospective citizens can look at ahead of the interview (though the examiner is not limited to those questions). Some are easy, some are not. The test is conducted orally, and candidates are not given multiple choices. The test is designed to require some knowledge of American history, the judicial system and political structure.

My big day was May 1, 2008 when I took the Oath of Allegiance. The Pledge of Allegiance was written in 1892 by Francis Bellamy (1855-1931), a Baptist minister. While the road was rocky getting here, it is a happy end.

Orsolya@cbalaw.org

Orsolya Hamar-Hilt, Columbus Bar, Executive Assistant, Ethics Department

An Insider View of the Housing Crisis

By J. Thomas Mason

In 2002 I joined M/I Homes as General Counsel after twenty years with Vorys. In the six years I have been with M/I, I have been asked on several occasions how it feels to go from representing clients to "being the client representative." Tim Hall, my colleague at M/I and former partner at Vorys, and I have on several occasions discussed this question and our perspective on those qualities that translate into good, effective legal representation by outside counsel.

M/I builds homes in nine different markets and we depend heavily on outside counsel on a myriad of state specific and general legal and business issues from land acquisition and development to labor, corporate matters, tax, litigation and compliance (e.g., Sarbanes-Oxley) to list just a few. As a consequence, we work with no less than twenty to thirty different lawyers on a regular basis. With collectively thirty-two years representing clients and ten years as "the client," we necessarily have developed views on qualities which, in our opinion, translate into good, effective legal representation.

When I joined M/I in 2002, the residential real estate market was almost at its peak (both sales of existing homes and new construction). Low interest rates, strong job growth and rapid price appreciation combined to fuel the highest rate of home ownership in the United States since the Census Bureau began reporting the statistic. Since then, a convergence of issues – housing affordability, excess inventory, the sub-prime/mortgage market crisis, stagnant or declining job growth and recessionary pressures, tightening credit standards, rising foreclosure rates and declining consumer confidence – have led to the current housing crisis.

The statistics are many, but a few are very telling. Existing home sales have dropped from 7.1 million in 2005 to 4.9 million in 2007, a 31% decline. Even more troubling to many homeowners who have viewed their home as a quasi savings/retirement account, the average sales price of a home in the U.S. has dropped almost 10% over the same period – eroding or eliminating home equity in the process. Housing starts are down almost 50% from their peak in 2005, with a corresponding ripple effect into related business sectors. And, as has been widely reported in Ohio, foreclosure rates have exploded – largely in the sub-prime sector – but certainly not isolated to that credit group.

Clearly, the United States is in the midst of a severe housing crisis. While it is anybody's opinion on when we will come out of this difficult period, and there are many opinions out there, there can be no debate about the dire condition of the residential real estate market today. In fact, as I write this article, the Senate is debating an economic stimulus plan to help kick start the economy. The plan is aimed, in part, at addressing the continued instability in the financial and housing markets by reforming FHA limits and relaxing standards under which government-sponsored Fannie Mae and Freddie Mac buy mortgages.

I share these statistics for one reason – there has never been a more important time in our business to have good, effective legal representation. What qualities translate into effective legal representation? In our view the following:

* The highest standard of ethics and integrity. A given, certainly, but its importance cannot be over-emphasized. "Operating with integrity and trust, guided by an unyielding commitment to business and personal ethics" is one of M/I's core values. As representatives of our company, our counsel need to be guided by the same principles.

* Be our business partner and deliver value. It is invaluable to have counsel who can cut through the issues and concisely address those we need to be concerned with and who conduct themselves as partners in our decision making. This requires a clear understanding of our business, our business environment and the task at hand. In many opinions, mine included, history will record this period as the worst housing crisis since the depression. Absent such an understanding and appreciation for the challenges facing our business, it is difficult for counsel to clearly articulate well reasoned and practical legal and business strategies.

* A true sense of professional service. We value attorney's who are responsive, efficient, skilled and knowledgeable in their area of practice with appropriate attention to detail, and who are pragmatic in their approach and practical with their advice.

When we reflect on those lawyers who are, in our opinion, most effective representing M/I Homes, we find these qualities and traits in each. None of this will come as a surprise to the readers of this magazine – it is very much "common sense." We consider ourselves fortunate – we work on a regular basis with many exceptional counsel who practice their profession with this "common sense" approach in mind.

tmason@mihomes.com

J. Thomas Mason, M/I Homes, Inc.

Housing starts are down almost 50% from their peak in 2005, with a corresponding ripple effect into related business sectors. And, as has been widely reported in Ohio, foreclosure rates have exploded – largely in the sub-prime sector – but certainly not isolated to that credit group.

The *Other* Housing Crisis

By Clement W. Pyles

Thousands of people are losing their homes – being forced to move to inadequate housing or to impose on family and friends in overcrowded conditions, or worst, living in cars or homeless shelters. Is this another story about the foreclosure crisis wracking the nation?

No. Although I don't mean to downplay the economic hardships that so many thousands of homeowners are experiencing today; renters are also faced with eviction from their homes every business day of the week. Dozens of evictions, mostly residential, are heard Monday through Friday in Courtroom 11A in Franklin County Municipal Court.

The stunned faces in the courtroom attest to the speed of the process when compared to foreclosures or other civil proceedings. Whereas a foreclosure might last months from filing of the complaint until the sheriff evicts the homeowner from the premises, an eviction can generally be completed within one month, from service of the statutory three-day notice until setout. How often have I heard the question from a worried tenant – don't I have 30 days to move? No, not when your landlord is evicting you for cause.

Tenants are not only surprised by the speed of the process, but also by what they cannot raise by way of defense. Tenants sit in a usually crowded courtroom, waiting for their cases to be called. Joe Tenant hears his name and goes before the Magistrate. Less than a minute later he has been evicted, told that he has five days (more realistically a week) to move his family from their home.

Joe may think that it's only fair that he be allowed to withhold rent if his landlord refuses to make needed repairs. But that's not the law, as Joe is quickly informed by the magistrate. If Joe had a lawyer, he might have chosen a safer course to get his home maintenance problems fixed. He could have called Code Enforcement or the Health Department to enforce government standards for maintenance and repair or health and safety. Or Joe might have escrowed his rent, asked the court to order the repairs or that escrowed rent be used to make the needed repair – or asked for a reduction in rent payments in compensation for the lack of proper maintenance – or terminated the rental agreement on his own time. If Joe had just consulted with an attorney even after withholding his rent, he might still have been able to raise the lack of repair as a defense to nonpayment by filing an answer and counterclaim in the eviction action.

But usually the problem is simply an economic one. Molly Renter lost her job, or missed work because of illness, or her ex didn't pay child support, or the accumulation of bills over time simply became too much. When her non-payment of rent case is called, she goes before the magistrate to answer five questions. (1) Did you receive the notice to leave attached to the complaint? (2) Are you behind in rent? (3) Were you behind in the rent when you received the notice? (4) Are you still living in the property? (5) Is there anything you wish to offer by way of defense? Molly tries to explain her financial hardship and how she just needs some time to catch up or move her family to another residence. But after listening patiently to her story, the magistrate informs Molly that her explanation is not a defense to the eviction action and that he is granting judgment for possession of the property, although she might try to work something out with her landlord. The magistrate then explains how long she has to move before being forcibly evicted from her home.

An eviction, or forcible entry and detainer, action is a summary proceeding, and in Franklin County the initial hearing is usually scheduled to be heard by a magistrate 14 days from the filing of the complaint. The hearing is a trial, and the tenant has the right to a jury. However, tenants seldom ask for a jury trial, and most cases would be directed out anyway.

Tenants are seldom represented in eviction court. Free attorneys are available only to a small percentage of the very poor through Legal Aid and the pro bono efforts of the local bar, and tenants either don't have the funds to hire an attorney or choose not to expend the precious few dollars they have on representation. Often they believe they can explain their situation to the "Judge" in order to buy some time to move or catch up on the rent. Many simply don't understand the limits on what a magistrate can do. Even when there is a defense – for example, the tenant had established a pattern and practice of paying rent late – the tenant doesn't adequately present his or her case.

Every tenant being evicted should have an opportunity to at least consult with an attorney. Even when there are no defenses to present it's important for tenants to understand the process, to know what type of deal they might negotiate, and to avoid making dumb mistakes. Preventive education is important too, and Legal Aid does offer housing advice clinics. Every tenant should understand the risks of not paying rent on time.

If every tenant were represented by counsel, there would still be a lot of evictions and a lot of people forced from their homes. People lose jobs – often through no fault of their own. Whatever the circumstance, individuals and families need to have a roof over their heads. The foreclosure crisis is certainly a strain on our economy, but folks who lose their homes through foreclosure are likely to become renters. Those facing eviction in 11A are likely to be in a much more desperate situation. Many will move onto other housing, but some will end up in shelters, on the streets or in less than adequate housing. And inevitably there will be upheaval in the lives of children – leaving their school, their friends, their home.

The recent efforts to provide homeowners financial and legal help are admirable, but I would just ask that some consideration be given to provide similar help to the tenants facing eviction in Courtroom 11A.

cwp@insight.rr.com

Clement W. Pyles

BUT CAN YOU FOLD AN EMAIL and Make An *Airplane?*

Digital information is not deleted when someone hits the delete button. Email survives the delete button because it can continue to exist on backups or in the recipient's Inbox. And since email is considered a "written word," it holds a lot of weight when it comes to denoting intention and purpose.

By Brett Burney

If technology is supposed to revolutionize the world of litigation, then why are we still pushing around so much paper?

The prolific nature of computers has considerably impacted the practice of law over the last several years. On a practical level, this means that no one uses a typewriter anymore. On a vocational level, this requires an understanding of how clients and society interact through the digital medium, and then how those interactions affect our modern body of common law.

This principle is visibly evident in the world of civil litigation where the Federal Rules of Civil Procedure were recently amended to accommodate the ubiquity of electronically stored information. Now the Ohio Rules of Civil Procedure are following suit.

The world has obviously changed, and "the machines" have become an integral part of society. Hardly anyone handwrites a note when an email will do. BlackBerrys are everywhere. iPods hold thousands of digitized CDs. And mobile phones are used to send text messages instead of making actual phone calls. The amount of digital information we consume and store every day is incredible and there is no sign of it slowing down. People would rather hoard digital bits than throw them away, and that means more relevant info that's discoverable and obtainable.

Technology can be overwhelming and often unapproachable for many legal professionals. None of us went to law school to learn how to extract email off a server, or question a witness about the logs kept by their instant messaging application. But that's exactly the spot many litigators find themselves in today. We're all struggling to graft old habits into a new world, and trying to make sense out of the technical confusion we face every day.

Probably the biggest catalyst for electronic discovery is email. Recent studies estimate there are over 170 billion email messages sent every day. That's about 2 million every second. Of course, a huge percentage of those messages are spam or unwanted solicitations. But regardless of how much you use email in your law practice, it's undeniable that the rest of the world has embraced this medium as a de facto mode of communication.

So what does this mean for the legal world? Well, specifically in litigation, it means that email has become a chief source of relevant information. Whereas in the past you may have been able to deduce the terms of a contract by looking at a solitary signed agreement, you're now more likely to see an entire history of the contractual discussion exposed in numerous email messages. It's as if the entire dialogue has been recorded for your review—and, of course, for the opposing party as well.

Another factor involved with emails today is that people will say the darndest things. People have a cavalier attitude when writing emails, perhaps because they believe their words are anonymous while they're hidden behind a computer screen. In fact, the opposite is true – email and other electronically stored information hardly ever goes away. Digital information is not deleted when someone hits the delete button. Email survives the delete button because it can continue to exist on backups or in the recipient's Inbox. And since email is considered a "written word," it holds a lot of weight when it comes to denoting intention and purpose.

So how does this affect the practice of law today? Well, in civil litigation specifically, it means that email is one of the first places parties look for discoverable information. For your own clients, this means you must be familiar enough with their IT systems so that you can properly inform them about preserving email. For example, you might need to counsel your client to suspend a backup tape rotation, or stop an automatic purge on the employees' Inboxes.

For the opposing party, you need to know the precise questions to raise so you are requesting the documents you and your client are entitled too. For example, it's helpful to know if the opposing parties operate their own e-mail server or if they download messages from their Internet service provider. The answers to these questions can have a significant impact on how you draft your document request.

Some legal professionals are understandably nervous about this new, uncharted digital territory, but the adventure is inevitable. Navigating through an e-discovery project still uses the map of reasonableness, so a party is not required to produce more or less information just because it's in an electronic format. But the rules have undoubtedly been amended to accommodate the quirky and dynamic nature of digital data.

Those attorneys who have embraced the call of the digital wild are observing that the "old school" adversarial approaches to discovery are giving way to a more cooperative attitude on obtaining and reviewing digital information. Change is not easily digested in the legal profession, but the world will force us to adapt, one email at a time.

burney@burneyconsultants.com

Brett Burney, Burney Consultants LLC

Reflections on the Role of Email — *A Cautionary Tale — with Three Rules*

By Christopher McNeil

Recently I had the opportunity to chair an ad hoc committee. The sixteen members of the committee were intent on offering recommendations to the director of the Ohio Department of Administrative Services on how to improve the regulatory climate in Ohio. It was a diverse gathering – there were lawyers and policy directors, in-house counsel and assistant attorneys general, representatives of the courts and the private bar. We could expect to work together for four months, trading ideas and discussing alternatives, with our dialog conducted mostly through email, punctuated by four monthly meetings.

All told, we only spent about six hours together, but over the four months we engaged in a very spirited discussion – almost all of which was recorded by email. The process was noteworthy, I think, because so much of the give and take occurred online, preserved by highly animated written exchanges among committee members. Instead of relying on minutes from overly-long committee meetings, our efforts were archived by our own writing, shared among those members of the group who were interested in particular sub-issues relating to the task at hand.

This experience led me to reevaluate the role of email in professional practice. Not that this is a new phenomenon – indeed, I've been using email to maintain close contact with the students I teach at Capital University Law School. Over the course of a semester, I'll typically read and send well over 3,000 messages to my students. As a result, I have for some time highly valued this mode of communication, both for its speed and ubiquity, and for its service as a written record of student-to-professor communication.

What I found illuminating about the DAS committee experience was how email has evolved into a real-time archiving tool. The collection of messages among committee members now serves as a highly descriptive articulation of a multitude of ideas, opinions, suggestions and observations, recorded contemporaneous to the event being discussed, not by a scribe but by the actors themselves. The group discussion was, as a result, more inclusive – all could weigh in on those topics of interest to them – and more accurate, because the comments were expressions presented not through a harried secretary of the committee meetings, but by the authors, in their own writ.

Having sung the praises of this mode of record-keeping and discourse, I hasten to add a note or two of caution. Email communication is both a blessing and a curse, for it has the potential to both enhance and destroy the professional reputation of its users, with blinding speed.

There are, I think, a core set of rules at play whenever we enter the slipstream of email communication. First and most compelling is the rule of downstream permanence and mutation. Oxymoronic though this may be, the downstream tendencies of email messages to both linger forever and mutate over time have to be taken into account by anyone tempted to use Outlook or Eudora as part of daily living. Once we let loose a message, it enters a world over which we have very little control. As it heads downstream, our message can be parked at an untold number of email directories, captured intact – with spelling errors, unintended slights, unrealized sarcasm – for all time. Downstream permanence can be the downfall of the Oliver Norths of the world (not to mention highly public officials). So Rule One, part A, is: Understand that what you write in an email message is forever, for all the world to see.

The flip side of Rule One, tied to the downstream metaphor, is that once your original message enters the stream of e-commerce, others can capture it, add to it, cut it up for sound bites, and then send it on its way, flush with its new meaning but still bearing your imprimatur. Rule One, part B, therefore, is: Prefer permanence over mutability. We have a choice whenever we use email: we can put our thoughts in the message box, or we can prepare a document (using Word or WordPerfect, for example), turn that document into a PDF (through our ever-present friend, Adobe), and attach the PDF to our message, making only a brief reference to the contents of the attachment in the message part of our email. The latter approach even permits us to sign the correspondence, as proof that we actually read what we sent out.

Rule Two takes into account the relaxed character of email: Write only what you think your mother would understand and approve of. No jokes; no sarcasm; no mean-spirited belittling of your peers, your adversaries, your soon-to-be former clients. Be very wary of expressing emotion – let that crush of yours be expressed by some other form of communication, because it will do you (and your intended) no good as it heads downstream. Relaxed though it may be, email produces killer transcripts, in a world where everything you write can and will be used against you, in a court of law and in the court of public perception.

Rule Three draws upon traditional notions of legal writing: Write as if your reputation in the legal community depends on it. Because it does. Ours is a very verbal, literate profession, and we're all trained to read the fine print. If you have a signature block in email that claims your every word is "Confidential," yet you're sending the message to a list-serve with a thousand recipients, you're simultaneously deluding yourself and diluting the meaning of "confidential." Boilerplate disclaimers are a tedious fact of life, but they should not replace common sense or the rule of law. If you send by email a communication that clearly is not covered by the attorney-client privilege, don't claim otherwise.

Three rules, a thousand possible permutations, all suggesting that this mode of communication is like any other tool available to us. The difference is this one moves with lightning speed and once let loose can never be reeled back in. Use it in good health, but think twice, and then think again, before you push "Send."

Christopher McNeil, Capital University Law School

Current Awareness:
ONLINE SOCIAL NETWORK SERVICES

Think – "six degrees of separation" – social networks allow you to broaden your circle of friends geometrically. It can also provide you with a physical space on the web where you can define yourself without having to purchase a domain name and learn html markup language.

By Ellen Smith

"Email is for old people" was the phrase that caught my attention one evening when I was listening to Net@Nite, a podcast on the TWiT.tv network, that has a live call-in component. The topic for discussion was how listeners are using social networks with their friends. The caller was a college student who indicated that he and his friends used a social networking service exclusively to keep in touch with each other.

Online social network services are a factor of Web 2.0 which fosters dynamic user generated content on the Internet and the creation of a hive mind. It involves using the Internet as a platform rather than as a destination.

I'd like to answer the questions – what is a social network service, why do I care and are there any good uses for them?

So what is an online social network service? As defined in Wikipedia it: "focuses on the building and verifying of online social networks for communities of people who share interests and activities, or who are interested in exploring the interests and activities of others, and which necessitates the use of software."

Think – "six degrees of separation" – social networks allow you to broaden your circle of friends geometrically. It can also provide you with a physical space on the web where you can define yourself without having to purchase a domain name and learn html markup language.

MySpace and Facebook have been getting the most attention from the media as they are the largest of the Web 2.0 companies and where the 18 to 30 year-old demographic is most concentrated. The press that these two websites generate seems to alternate between the dangers of online predators and issues of privacy violation.

The variety of online social network services is actually much wider than these two. Wikipedia has listing of nearly 100 websites which is not completely comprehensive but gives you a good idea of the variety.

The trend seems to be driving social networking sites into more niche areas and for specific purposes.

I've been playing with a small selection of social network services over the past year and thought that I'd recount some of my experiences here. Like the list in Wikipedia, these are not comprehensive, merely representative of what is available in the Web 2.0 universe.

Meet-up.com - http://www.meetup.com/
Do you want to practice your German? Talk about philosophy? Meet new people with the same interests as you? Then Meet-up.com is a place to start. Meet-up facilitates people who have like interests to find each other then to coordinate face to face conversation. You can search by topic or geographically to see what is in or near your city. Or if you don't find exactly what you're looking for and you like to organize you can start your own meet-up.

del.icio.us - http://del.icio.us/
Recently purchased by Yahoo, this site enables you to store your favorites or bookmarks for web pages on the web. This is handy if you are away from your home or office computer and you want to show someone that recent web site you found. del.icio.us allows you to organize your favorites; using folksonomies you tag your entries with keywords which help you to find them later.

Flickr.com - http://www.flickr.com/
Flickr is a photo sharing website, also owned by Yahoo.You can post pictures for the whole world to see, or limit them to only people you designate as friends or family. Like del.icio.us you then tag each photo in order to organize them into subject groups. In this way you can search for images that other people have loaded. The Library of Congress recently loaded thousands of photographs that have been determined as free from copyright and are inviting members of Flickr to tag them thereby increasing searching access points.

LibraryThing.com - http://www.librarything.com/
Do you love books? Have you secretly wanted to be a librarian? You can list your personal library for all the world, or at least the 350,000 members of LibraryThing, to see. You are also provided with opportunities to volunteer for review copies of new books provided by publishers. You can join discussion groups to talk about your favorite genre or author.

Ravelry.com - http://www.ravelry.com/
Ravelry has become something of a phenomenon with the knitting and crochet community since its inception in the past year. Currently at over 72,000 members it is a place where you can post pictures of your projects or yarn, share patterns, techniques and join discussion groups centered on your particular interests. It is a great resource for inspiration when you are looking for a new project or trying to figure out where you went wrong with your current one.

Technolawgy

LawLink.com - http://www.lawlink.com/
This is the first social network service set up exclusively for attorneys. It is free but limited to attorneys only. West is rumored to be working on a B2B (business to business) model which will be marketed to law firms.

Online social network services are tools and, as with any tool, you should use them with care. I have noticed since joining several of these that it was probably not a good idea to use the moniker that I use for my gmail account as a screen name since these are apparently harvested by spammers. It is generally a good idea to lock down your personal information and limit it to only those people that you allow to have access to it. If you're posting intellectual property, like photographs, designs or writing, be sure to clearly designate it as such if you want to maintain any claim on it.

I was able to test my Facebook profile against a new website called "What's yoName?" which searches across selected online social networks for email addresses, usernames, phone numbers and first or last names. The URL for this website is http://www.yoname.com/. I can't find myself on Facebook by using any of the access points indicated, which would indicate that the search engine can't reach profiles that have been locked down.

If you have children who frequent MySpace or Facebook there are good tips offered by the National Center for Missing & Exploited Children relative to what you should communicate to your children. This information may be found at: http://www.netsmartz.org/.

Most people will gravitate to whatever social network services their friends use as these services create something of a walled garden. However, there is no hiding from advertisers, as that is how these typically free services are funded and the companies are more than happy to have self-selected demographics where they can to target their marketing.

This generation of young people is the first to have grown up with Internet connectivity as part of their everyday life. They are far more comfortable with online culture than any other generation and they are arriving at a workplace near you. They may even let you be their friend.

Ellen Smith,
Librarian, U.S. Courts Library

Tomorrow in Legal Tech

By Sharon D. Nelson and John W. Simek

"Beam me up Scotty."
Captain Kirk in Star Trek, 1966

Star Trek is coming. We can feel it in our bones. In the not-too-distant future, lawyers will stride through their office door and command: "Lights. Music. Computer on." And it will happen. We already have voice recognition software and we have "smart home" devices in abundance. All this will one day converge so that we can do much of what we do physically by voice command.

Likewise, tabletop computing is likely to take off. How much simpler to arrange our photos or graphics by manipulating them by hand on a tabletop than to do it the current tedious keyboard fashion. By the end of 2008, you can expect to see table top computers in high tech companies, in bars and on cruise ships – they will be used, at first, as devices for the technologically advanced (with deep wallets) and for entertainment purposes – but rest assured, their use will spread. Cameras will be made for table top computers such that they can interact with the table and upload photos without any physical connection – it will all be wireless.

Look at the surfaces around you – not just tables, but walls, ceilings, etc. They can all be turned into computer monitors by the simple use of projection devices. Virtual keyboards can go wherever you go for those things that still require typing.

We may be a tad short of the "beam me up" era, but we are getting mighty close. Perhaps most interesting is all the things we CAN do with one device or another and our frenetic attempt to cram all those functions into one device. One thing Apple's Steve Jobs has always keenly understood it is that is important to cast your net upon the waters and reel in the functions that consumers want. Not all functions belong on a device simply because you can put them there. The device will be too cluttered and complicated. It is critical to find those selected functions that consumers are hungry for and make them available in a simple, user-friendly fashion. Hence, the frenzied purchasing of the iPhone.

Technology moves so fast that no one can truly keep up with it, even the technologists. Pretty soon, if the federal government has its way, we will not only be carrying national ID cards, but have some form of RFID on our person at all times telling everyone with a reader all about us. Worst case, we'll be required to have RFID implants. Soon you'll be able to walk into your drugstore and have the druggist look at the screen reading your RFID chip and call out helpfully "Hemorrhoid cream is on aisle 9 Ms. Baker!"

Right now, most of those who cater to the legal market are guessing at what lawyers want, but this guessing is likely to become more astute over time. Even the non-legal market will impact us. Are we not all shackled to Microsoft? There's our prediction – for the foreseeable future, we will remain shackled to Microsoft. Until and unless the third party software lawyers need becomes available for other operating systems, Redmond will continue to rule. But no sooner had we written those words than we read an article about three of the Fortune 100 companies exploring the possibility of replacing the Office Suite with Google's rendition of it. Microsoft may have short term dominance, but will its high prices and notorious inefficiencies play into the hands of competitors?

We are less certain about Google, which is no longer poised to become the second 800 pound gorilla in the land (as it was last year), but has solidly achieved that position. Google's privacy policies are under intense scrutiny in the European Union and growing scrutiny here in the U.S., but thus far, virtually every new Google venture has been received warmly by the public. Another prediction is the fierce battle of the gorillas as Google begins to infringe on the Office productivity space of Microsoft. Google is already the leader in Web 2.0 applications as desktop replacements. Microsoft is increasing the stakes and going after Google's market with their Live applications. This clash of the titans should be interesting to observe – from a safe distance, of course.

At the end of the day, lawyers want to practice law. There are lawyer/geeks to be sure, but they represent a small slice overall. So let us also predict that lawyers will be looking for hardware and software that performs legal core functions at a budget price. They may not be able to escape the clutches of Microsoft, but they are keenly looking at low or no cost utilities that make their lives easier. The utility JOTT, which is creating a lot of buzz as we go to press, is just one example of a simple need being fulfilled. Now that we all live and die by the Inbox, how much sense it makes to call a number and leave a voicemail that will be converted to an e-mail in our Inbox. How many scraps of paper have YOU lost? We lost count a long time ago.

One area in which we expect to see great progress is in collaboration. Right now, lawyers are struggling to collaborate easily, whether in collaboratively working on documents or attempting to hold a meeting. It probably isn't fair to call collaborative technologies nascent – they've been with us for a while. But technologies which are cheap and easy – oh boy, is there a demand for those technologies! About the same time as this article is published, the ABA will be publishing a guide to lawyer collaboration by noted legal technologists Tom Mighell and Dennis Kennedy – that's a book you'll want to buy if collaboration is something you want to do better – or to begin doing!

Another arena of change will be in the courtroom. We believe that judges will become more receptive to courtroom technology and some local court rules will change to make it clear that lawyers can indeed bring laptops and perhaps even phones into courtrooms as a matter of course because that is where their cases and calendars are. Mind you, it is likely that if cell phones go off, as they were wont to do in the old days when rules allowed them, irritated judges will do what one of our judicial friends did – throw the phone out the courthouse window. In all likelihood, a lawyer's courthouse ID (and those IDs are sweeping the nation as a way to avoid security lines) will also allow the entry of his/her technology.

Technophobic judges still abound, but they are lessening in number – and the legal world is pushing hard for change. All of the U.S. district courts now have mandatory electronic filing – and the appellate courts will follow in the not-too-distant future. The states are clearly moving in the same direction, some faster than others. But adoption of e-filing as standard is a major domino which will topple other dominos and accustom the legal world – in the cities – and in the boonies – to working electronically.

We are currently up to about 2000 legal bloggers and a relative handful of legal podcasters. Those numbers are sure to rise. Blogging is easier and cheaper, but we'd be surprised if both areas didn't continue to grow.

Thinking of getting a BlackBerry? Our advice is not to do it. Our prediction is smartphones like the Treo 700WX, which integrate with an Exchange server, will be too alluring to resist. BlackBerry usage may well have peaked, especially since it requires additional software and hardware that the Windows Mobile devices do not.

The new iPhone? Currently not a business device. If you're feeling like Father Christmas, get one for your kids. It's new, it's slick and it wasn't made for anyone who wants to conduct business. However, we'll go out on a limb and predict that the iPhone will "begin" to infiltrate the business market as third party applications become available and Apple opens the connectivity options. At the end of the day, we don't think it will cut the mustard and will fall short of meeting the REAL needs of the business community.

Lawyer advertising has already shifted in part from the print world to the electronic world and that trend is expected to continue. We buy pizza online, we buy movie tickets online, we cruise online, and yes, we find lawyers online. Time to ditch or at least diminish the Yellow Pages advertising and move into the whizbang of electronic marketing.

Vista? Don't rush in. [....] The next year will see growth in Vista usage, but most of it will come through normal upgrade replacements, not a rush to Vista itself. And at that, most consultants are telling folks to order replacement machines with XP where possible, at least until Vista stabilizes. Recent studies have shown that no matter what you run Vista and XP on, XP runs significantly fasters. Tell us again why you would trade a race horse for a nag?

A lawyer shift to Macs? Nope, we don't predict that. They are easier to switch to now, given the interoperability of the new MAC operating systems with Windows, but the Windows applications will continue to dominate the market. Granted, some attorneys will purchase the Mac and dual boot to a Windows environment, but most will just stick to a straight Windows machine. Still, there's more interest in this area then ever before. Watch for Brett Burney's new book on Mac for Lawyers to surface in 2009. If anyone can give lawyers a credible reason to move to a Mac environment, it will be Brett.

Electronic discovery? Look for a steady shift to native format production, and a consequent saving in ED costs. Those who are married to TIFF production will limp along for a while with gullible clients, but the smart ED vendors are making the move to native now and using TIFF only in situations where native format doesn't work, primarily where redaction is involved.

In the next year, and every year for years to come, look for a shakeout among ED vendors. Everybody decided all at once that they could do ED - it was the California Gold Rush all over again. Many can't do it all, many don't do it well, and many charge highway robbery prices because that's what the market has borne in the past. Lawyers and law firms are getting shrewder and the days of charging astronomical prices that bear no relation to time and effort are numbered.

Backup? The biggest change is that more and more lawyers are moving to the relative simplicity of an external hard drive for backup. Cost-effective, reliable, and easy. More adopters are likely.

Outsourced backup? The prices are (relatively) high, there are security concerns and more than a few have outright failed to deliver on their promises. We guess that lawyers will continue to do it, but there seems to be a growing do-it-yourself trend now that backing up reliably has gotten easier and cheaper.

The list of predictions could go on and on but our crystal ball is murky and undoubtedly, we have already written words we'll have to eat. That's just how it goes in the legal tech world.

One thing we can say for sure: no one REALLY KNOWS. Technology evolution has been a constant source of surprise and no one has a perfect record of predictions. The only thing we can say for sure is that the computer you just bought is already well on its way to obsolescence – for sure, those in development are faster, smaller and contain more robust resources. We are moving at warp speed, with no sign of slowing down.

Even the guru of gurus has been known to be wrong. Witness a one time prognostication from Bill Gates: "640K ought to be enough for anybody"

Predictions are a dicey business.

The authors are the President and Vice President of Sensei Enterprises, Inc., a legal technology and computer forensics firm based in Fairfax, VA. 703-359-0700 (phone) www.senseient.com

Sharon D. Nelson, Esq. and John W. Simek

IS THE iPHONE READY for Prime Time with Lawyers?

By Troy Henley

The iPhone arrived on the scene with great fanfare and high expectations. It was Steve Job's latest groundbreaking product destined to put Apple Computer in the record books again. The phone pioneered many new features in a surprisingly thin and lightweight package, the same stylization that brought the iPod music player to life. With its nearly button-free surface and touch-driven interface, it was innovative but it lacked the core feature that would turn it into a powerful tool for lawyers. The iPhone did not have the ability to synchronize with corporate email systems the way that the Blackberry and the Treo do. A key feature lawyers have grown to depend on. Granted, the iPhone can be configured to synchronize with an email account but that's all: no contacts or calendar synchronization over-the-air and no real-time synchronization to corporate systems. Blackberry and Treo own the market now but that's all about to change. With the Enterprise synchronization software already in the hands of beta testers (35% of Fortune 500 companies participated) and the iPhone 2.0 release date set for July 11, it will soon become a VERY compelling addition to law firms and businesses. The new iPhone model also boasts high speed 3G technology, built-in GPS and a $199 price tag thanks to a price subsidy and data plan price hike by AT&T.

Due to pressure from developers and consumer backlash, Apple moved away from its traditional stance of blocking third party software development and released a software developer's toolkit in March. They also promised full Exchange integration that would synchronize your Outlook contacts, calendar and email with the iPhone. To help tout the new direction that the iPhone is headed, Apple pre-released the developer's toolkit to a couple dozen firms that quickly retooled their best applications to run on the iPhone. An impressive array of programs were demonstrated – from sales force management software to games that utilized the iPhone's built-in Gforce meters (think of the Nintendo Wii paddles). It showed the power of both the development kit and the iPhone as a computing platform…a dazzling array of applications were produced in only a two-week period. That's just a glimpse of what we'll see in the months ahead. Imagine accessing all your office Outlook data on the iPhone and utilizing a synchronized version of your case management software to check case facts, documents or SOL dates on the road. It's not that far away. Some of the existing iPhone features include visual voicemail, Bluetooth support, real web surfing similar to what you experience on an office PC and zoom in\out capability (which is mind blowing to witness first hand). All of these features are complimented by a crisp, high resolution LCD display. It also supports high-speed WiFi internet connectivity so you can jump onto the internet from wireless access points at your office, hotel, coffee shop or local bookstore. WiFi access also allows you to bypass using expensive minutes from your cell data plan.

iPhone drawbacks? Yes, it has a biggy, the lack of a physical keyboard. The touch screen keyboard is innovative but does not provide sensory feedback with regard to touch, valuable tactile feedback. (You need to sense where the keys are when shooting off an email.) So if you are a high volume typist on your existing phone, the iPhone may prove frustrating, even after Apple releases the full email\calendar\contacts integration suite. But if you use your smart phone for reading email, viewing your calendar and sending brief email messages and replies, this will be a perfect fit with the June release of the enterprise software suite.

Geek Speak: The iPhone currently supports email synchronization, but iPhone users have been largely locked out of corporate email systems because of its clunky implementation. The iPhone utilizes an email synchronization technology often blocked by corporate firewalls due to security concerns. Accessing corporate email through the iPhone web browser is another possibility, however you have to manually log into your corporate email website with every visit, a time consuming experience. The wait for an enterprise-grade solution for the iPhone is almost over and it will turn the iPhone into a powerful must-have for most smart phone users. Apple's enterprise software has already been in the hands of Beta testers and will be widely released to corporations this month.

troy@cbalaw.org

Troy Henley, Columbus Bar Director of Information Technology

Trust Your Client's Instincts

By Stephen E. Chappelear

I was sure I knew a heck of a lot more about trying a personal injury lawsuit than did my client. After all, I had done pretty well in law school, was working in a good firm, and I had read lots of articles and books about trials. She was just a high-school-educated, middle-aged housewife who had the misfortune of having a car smash into the back of her car as she was trying to turn into her driveway.

It was only my second jury trial, but I had lots of confidence, maybe from the good fortune of coming up with a victory in the first one, eight months earlier. I thought I had this stuff pretty well figured out.

The first area where my client differed was the value of the case. I had come up with my own idea of what a jury might award, based upon Betty's injuries, the time it had taken her to recover, medical bills, and the extent of damage to her car. In the weeks leading up to the trial, we negotiated with the defense lawyer hired by the defendant's insurance company. He would increase his offer in roughly $1,000 increments, and I would lower our demand by similar amounts. The morning of trial, we received an offer I felt was squarely in the range of what a jury would likely award, and I recommended settlement to Betty. She refused, insisting that she was entitled to substantially more money. She refused to budge from our last demand, leaving us $4,000 apart.

The judge was not pleased with our inability to settle the case and seemed disgruntled about going through a trial when we were so close, but said he would bring up the jury.

The voir dire process brought our second disagreement. One of the prospective jurors was a highway patrolman. I wanted to use a preemptory challenge and excuse this gentleman from this case. My reading had told me that law enforcement officers, particularly highway patrolmen, see many bad car crashes and get jaded to death, dismemberment, and pain and suffering. I thought he would be quite unimpressed with Betty's lack of any broken bones or blood, and her complaints about an aching back. Betty felt differently. She said she "had a good feeling" about our highway patrolman and asked to allow him to remain on the jury.

The trial proceeded for two days. We waited nervously for the jury foreman to announce the verdict.

To my great surprise, but not Betty's, the verdict was five times higher than the defendant's final offer, and four times higher than our last demand.

Betty very kindly declined to say, "I told you so," even after we interviewed some of the jurors and learned that the reason the deliberations went on as long as they did was that the highway patrolman was arguing for a verdict twice as high as what was ultimately returned.

While I like to think that knowledge, experience, judgment, and good instincts lead me to good advice and making smart decisions, I try not to let my ego control me, and I always listen to my client's thoughts.

sechappelear@hahnlaw.com

Stephen E. Chappelear

Using Networks To Retain and Promote Women To Partnership

...partners can help to create a network of support for female associates by advising them through the inevitable hard times...

By Dawn Rae Grauel

An essay about women in the law would be incomplete without addressing the issue of the lack of female partners – particularly equity partners – in law firm ranks. And why is that? Because of the numbers.

The numbers reveal that while there is gender parity amongst law school graduates and firm associates in today's legal market, a 2006 survey conducted by the National Association of Women Lawyers revealed that just 16% of equity partners at large law firms were women. Similarly, according to the National Association for Law Placement, only about 17% of the partners at major law firms nationwide were women in 2005 – an increase of only 4% since 1995. Finally, only 5% of the managing partners at major law firms are female.

While NALP and NAWL's numbers highlight the gender gap in partnership ranks, a recent report issued by the Equality Commission explores the factors driving the disparate numbers. The Equality Commission's "Women Lawyers and Obstacles to Leadership Report" (Spring 2007) was based on two surveys designed and conducted by the MIT Workplace Center. Survey 1 focused on rates of attrition at firms, and Survey 2 focused on three sets of information: a) the reasons for moves; b) descriptions of firm practices that affect attrition; and c) demographic information of those who stayed, left the profession, or moved to a different firm.

The report provides concrete information about the factors driving attrition, but it did not reveal anything earth-shattering. According to the report, women leave the partnership track in much higher numbers than their male counterparts, and women leave the partnership track due to the difficulty of combining law firm work and caring for children. These are certainly not shocking revelations.

The report also revealed that women stay in firms where their opportunities for advancement are not affected by their family-friendly schedules. And while this revelation is not surprising, it does represent a valuable piece of information. If law firms want to retain female attorneys, then they should ensure that female attorneys understand that they can make partner despite having to work a modified schedule. This is a particularly important piece of information for law firms that are struggling to retain and promote female attorneys. Firms may be willing to provide flexible arrangements for women attorneys, but women attorneys may not know that such arrangements are even an option. As a recent the New York Times article recognized, detailed studies indicate that female lawyers often felt pushed into the decision to leave a firm even though they would have stayed if a structure existed to allow them to maintain both their career and family. "Why Do So Few Women Reach the Top of Big Law Firms?" *The New York Times* (Mar. 19, 2006).

Thus, one of the primary issues in addressing female-attorney retention is whether law firms can create a structure where a woman's partnership potential is not adversely affected by the need for flexible schedules due to family obligations. But just how do firms create a culture where women believe that they can be successful even if they need to work 60 hours one week and 30 hours the next to address family obligations? How can a woman truly be successful where law firm power brokers believe that face-time and arbitrary deadlines are rites of passage? How do firms create an environment where a female attorney feels comfortable explaining to the partner-in-charge that she has to leave at 4 o'clock for the next two weeks because of a child-care issue?

While there are undoubtedly a myriad of elements necessary to create a culture that is female and family friendly, one way to go about creating such a culture is through mentoring. Firms should encourage and reward both male and female partners – preferably those with management skills – who take the time to mentor female associates. Such partners can help to create a network of support for female associates by advising them through the inevitable hard times in their careers. But this can only work if meaningful mentoring relationships are developed. Mentoring is not just an annual lunch date.

One way to produce meaningful mentoring relationships suggested in the literature is through the creation of "mentoring circles." To create a mentoring circle, groups of associates and partners with common interests and backgrounds are matched and meet regularly in informal contexts to get to know each other better. The literature suggests that over time, compatible 1-to-1 pairs will develop as participants gravitate to attorneys with whom they feel a connection. Such innovative approaches to mentoring can help to create meaningful networks that female attorneys can lean on when necessary.

Not only do female attorneys need networks within firms to make it, but we also need to take an active role in creating a firm that is supportive of women. Women attorneys cannot sit idly back and wait for firms to be more female or family-friendly. Instead, we have to recognize that it is our responsibility to be proactive in creating a culture where women feel empowered enough to tweak their own schedules or to work from home. And female partners have a responsibility to help create this type of environment. They can remind their peers that being more family-friendly means bucking the traditional notions of what it means to practice in a large law firm; that it's silly to expect to see associates at the office on Saturdays if they can just as easily work from home. Female partners can create a more family-friendly environment by consciously eschewing the very natural inclination to think, "I had to make it through without the benefit of [fill in the blank], so these associates should too."

All partners in these support networks should advise female associates that it is okay to use their professional judgment in governing their schedules. More important, attorneys within these networks must defend the associates' flexible schedules where the associates are making their hours and producing quality legal work despite the fact that they are not in the office everyday from 8 am to 7 pm. These networks can also serve as a voice that reminds decision-makers that "face-time" is not family-friendly and certainly isn't the measure of a good attorney.

Why are these measures even necessary? Why is it our responsibility to articulate these points or highlight these issues? Because as recognized by a female partner quoted in the NYC article, "[a]s long as firms are male-dominated, it's much less likely that firms will make changes to accept the challenges of work-life balance. It's not that men aren't receptive to theses issues, it's that they're not aware."

Thus, partners – both male and female – have a responsibility to be a part of networks and mentoring relationships and to make law firm management aware of the unique issues female attorneys face. Further, attorneys have a responsibility to each other to ensure that female attorneys can make it to partner or be otherwise successful even if they have modified hours or cannot travel for family reasons. Although these family issues are usually temporary, they can lead to a permanent departure from the firm or worse – the practice. Partners can effectively mentor female associates through the unavoidable – but temporary – tough spots in their career.

Of course, implementing measures to increase the number of women attorneys in partnership ranks is not just an institutional responsibility – it is our individual responsibility. As associates, we are responsible for building networks within our firms. We must be politically savvy enough to realize that we need networks of male and female partners to serve as our advisors and cheerleaders if we want to be successful. In other words, if our goal is to make partner, then we are responsible for doing everything we can to make sure we realize that goal. And one of those things is creating a network of folks who can help advocate for you and advise you when things get rough.

If we do not take responsibility at both the institutional and individual levels, we stand to lose a female attorney who enjoyed the practice but left because she felt like she could not make partner either because she could not travel, work at the office until all hours, etc. Perhaps she could have made it if a network of people were trumpeting her cause to the firm. Perhaps she could have made it if more women held leadership positions within the firm, increasing awareness and sensitivity to such issues. Perhaps she could have made it if she was surrounded by supportive attorneys who saw to it that she got through the hard times in her career. Perhaps not. But our problem as a profession is that we often cannot answer these questions.

Dawn Rae Grauel, Hahn Loeser + Parks

Advocate for the "POOR AND THE POWERLESS" — LEGAL AID

By Cindy Dryden

From a one attorney office on West Gay Street to 39 attorneys at its current address, City Park Avenue and its Marion branch office, Legal Aid Society of Columbus has consistently used its "legal skills and expertise to improve the quality of life for the poor and the powerless."[1]

LASC was established in 1954, the vision of a group of Columbus Bar Legal Aid committee members for a formal program delivering legal services to the poor. Cases consisted of divorces, bastardy, rent, bankruptcy, garnishment and attachment, and some criminal cases.

When the work proved to be too much for one attorney, LASC merged with the office of the Public Defender Society of Columbus to become The Legal Aid and Defender Society of Columbus in 1959. Three attorneys and two secretaries now provided these services. From 1959 to 1965 the caseload was 25-30% criminal cases, 35-50% family cases, with the rest economic, property, and miscellaneous cases.

Tension "between using its resources to serve as many individuals as possible and performing impact work runs throughout the Society's history."[2] Consequently, the Society created a Group Service Attorney position 1969 for "impact work." One such case was *Goss v. Lopez*, which went clear to the U.S. Supreme Court. Group Service Attorney Kenneth Curtin, a recent Cornell Law School graduate, and Denis Murphy, a private attorney and later Columbus Bar president, successfully argued that Ohio's school suspension procedures violated constitutional due process law.

The Public Defender Bill was passed in 1975 resulting in the appointment of a County Public Defender, so the agency reverted back to The Legal Aid Society of Columbus name and handled only civil legal matters.

Low-income persons were first appointed to the board in the 1960's, a practice that has since remained due to Office of Economic Opportunity (OEO) assistance being contingent on such representation.

Since its beginning in 1954 up until 2004 the population the LASC served grew from 500,000 to 1.3 million. Ever a challenge, funding for the organization has changed and evolved over the years. At first, United Appeal (now United Way) was their sole source of funding. Next, United Appeal and the City of Columbus funded the agency. The Economic Opportunity Act of 1964 resulted in federal funding for the first time. Later, the Legal Services Corporation Act of 1974 provided funds. In 1985 Interest on Lawyer Trust Accounts (IOLTA) funded services. Today funding is provided through the Legal Services Corporation, United Way of Central Ohio, the Ohio Legal Assistance Foundation, the Columbus Bar Foundation, the Columbus Coalition Against Family Violence, and various grants.

In recent years LASC has created collaborations and partnerships, such as the pro bono partnership with the Columbus Bar.

Programs include Foreclosure Intervention: LASC partners with other community agencies to keep low income and elderly homeowners in their homes after foreclosure proceedings have started. (In one instance, LASC worked with the Columbus Housing Partnership to help an elderly woman avoid foreclosure and keep her home.)

Domestic Violence: The goal is to reduce instances of children being removed from their homes due to domestic violence situations. LASC partners with Franklin County Children Services, a team of attorneys and victim advocates to provide "holistic legal services" such as representation, counsel and advice, and linkage to community resources for civil protection orders, divorces, custody, child support, housing, and public benefits, which Board Chair/President Thomas J. Bonasera refers to as "the safety net for our most vulnerable."[3]

Child & Youth Law Program: CYLP works with school systems on individual education plans, behavior problems, medical problems, and benefits. In addition, LASC partners with Nationwide Children's Hospital to provide civil legal representation for the "whole child." CYLP lawyers address underlying issues like poor housing conditions and denial of Medicaid or educational rights "that cause or exacerbate the child's medical condition."[4] The program director is an adjunct faculty member at Moritz College of Law.

Community Economic Development Unit: Working in partnership with community agencies CEDU provides the Low Income Taxpayer Clinic and a Legal Aid Neighborhood Services team, which provide counsel and employment opportunity assistance.

Ex-Offender Re-entry Services: A concerted community effort is involved in helping ex-offenders reintegrate into the community as productive members of society.

Examples of LASC assistance: Loss or denial of benefits, Medicaid, Medicare, Social Security, Unemployment Compensation, evictions, foreclosures, domestic violence, child custody, consumer issues, garnishments and attachments, defending against guardianships, landlord/tenant, dissolutions and divorce, bankruptcies, wills, power of attorney and estates under $100,000 for senior citizens, and kinship care issues.

LASC also conducts educational workshops on Health Care, Tax Issues, Ending Relationships, Domestic Violence, Tenants' Rights, Wills, Living Wills, Children's Law, Education and Health.

Under the leadership of Bernard S. Dempsey Jr., CEO/Executive Director, the Columbus and Marion offices have 39 attorneys, 13 paralegals, and 22 other support staff, LASC currently serves Franklin, Delaware, Madison, Marion, Morrow, and Union counties.

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1. *Legal Aid's Rich History: The First 50 Years By Marcia L. Brehmer, Esq. (Director from 06/1982 – 03/2003)*
2. *www.columbuslegalaid.org*
3. *The Columbus Foundation Comprehensive Report*
4. *Kathi L. Schear, Attorney at Law, Legal Aid Society of Columbus*

cadryden@sbcglobal.net

Cindy Dryden

What to Do When the Economy *SLOWS*

By Tim W. Hrastar

Going through times like these brings it to our attention that we can't take things in life for granted – shaking up your world every now and then is a good thing.

Years ago I asked a colleague of mine, also self-employed, what he does when business gets slow and the recession monster lurks at his door – his response was, "I play golf." That's certainly one way to cope with the situation, and probably in the long run a really good way to handle it. But for those who get anxious and would feel guilty on the golf course when they feel they should be looking for business, there are things that can be done. There has been a lot of talk lately in the trades about law firms being in the middle of a recession, so I thought I would try to put things into perspective.

First of all don't panic – because you're not as bad off as you think. According to the World Bank 2.5 billion people live on $2 per day or less – truly tragic. Keep in mind that recessions are a normal part of economic life – they happen about two times every decade. Also, by the time we are officially said to be in recession, we are usually coming out of it.

When I look back at my 32 plus years in my own business I have a difficult time even remembering what happened during the recessions I experienced—it seemed to be business as usual. The point is, in the big scheme of things, it's usually never as bad as people think– we always recover. Plus, you personally can't do anything about the national and global economic situation, so don't wring your hands over it and you'll come out on the other end not much worse for wear. By the way, many of the firms I talk with have been having very good months so, once again, recessions may not affect everyone in the same way.

If you have been concentrating on business development all along you are doing pretty much all you can do. When the situation starts getting you down that's the time to start being even more attentive than usual to your clients and think more on how you might serve them. Then after the recession continue to be as attentive to your clients as you were. Going through times like these brings it to our attention that we can't take things in life for granted – shaking up your world every now and then is a good thing. So here are three things that will give your practice a shot in the arm. Even if you are not concerned about recession do these things anyhow.

Get on the phone and write emails to make more contact with your client base, starting with your key clients. Go to breakfast, lunch, or dinner, and just get a feel as to what their concerns are. Remember, they are living in the same economic world you live in. The two of you can brainstorm ways to help them in their business. This exercise has several benefits. First, it can make both of you feel better and more in control; second, you will undoubtedly come up with positive ideas that can help your client, and at the same time will provide work for you; third, your client will see you as caring for their needs – loyalty, a stronger bond, and more business is the result.

Before you meet with your client(s) think about ways to help them based on what you know about them and their business. This is the "Thinking Ahead of Your Clients" idea I always refer to. Bring ideas to the table – stimulate their thinking and you will stimulate business for both of you. For example, provide them with a free seminar on how to use your legal services more effectively during these times – or any time for that matter.

Remember, when people ask, "how's business?" Your response is, "business is good, I am always looking for more!" Be positive and look forward. Don't dwell on the negatives that may surround you right now. They will pass, and pass more quickly if you look to the future.

I am sure you've heard all this before, and instinctively know what to do – now go and do it! Start contacting your best clients first and move on down through your list – fill up your calendar with client meetings, and make sure the meetings are about your clients' concerns, not yours.

twh@rapportmarketing.com

Tim W. Hrastar

A *Conspiracy* of Paper and A *Spectacle* of Corruption[1]

By David Liss
Reviewed By Janyce C. Katz

A *Conspiracy of Paper* uses as its base the true story of the stock frenzy leading up to the collapse of the South Sea bubble. *A Spectacle of Corruptio*n features an actual election with corrupt politicians. The early 18th Century English system of justice – or lack there of – plays a major role in both books.

Liss creates a story about an honest pugilist turned thief-taker, Abraham Weaver, in order to weave in tales of London at the time of the South Sea Company and in the years after the company's stock collapsed. The very real historical figure, Jonathan Wild, is one of the many characters populating David Liss's Conspiracy and Corruption.

Thief-taker General Jonathan Wild, resident of London, helped people regain their stolen items, for a small fee - of course. It was usually easy for Wild to return items to their rightful owners because the thieves and prostitutes he kept on his payroll usually had stolen them from the owners. When Wild negotiated a return of items, the thieves then received a cut of Wild's charge to the owner. If the thief irritated Wild or failed to report all items stolen, Wild would have the thief arrested.

Allegedly, Wild marked an "x" on a list next to the name of each thief he turned into the authorities. After the thief had been executed, usually by hanging, Wild would place a second "x" next to the name. The hanging of the "double crossed" thief or prostitute would serve as a warning to the others in Wild's stable as well as to those operating independently.

The murder of Weaver's father in *Conspiracy* entwined Weaver with Wild. Both men operating on the fringes of what becomes the first stock market crash in modern history.

In *Spectacle of Corruption*, the actions of one judge made Wild and Weaver temporary allies. The London in which Wild and the fictional Weaver operated lacked a city-wide police force, a prosecutor and, of course, indoor plumbing. It was a dirty, whore and criminal filled city whose residents were often incited against crime and political parties by the new phenomena of newspapers. Without an organized police force to stop them, thousands of people made a living as thieves.

A 1697 Act of Parliament setting a fee for the capture of thieves was a means of addressing the problem and encouraging the public to protect itself. The reward of 40 pounds for turning in a thief, an amount usually earned by a laborer over a four-year period, encouraged the development of the "thief-taking" profession. For someone like Jonathan Wild, that law and the lack of a governmentally-controlled police force was encouragement to set up stables of criminals and prostitutes around London. Wild, who was respected by the government and public as well as by the thieves, suggested to the Privy Council that a higher reward for the capture of criminals would lessen the amount of crime.

In 1720, the reward jumped to 100 pounds for criminals caught in certain areas. Wild's double cross became more profitable. Those turned in to the justice system had to have sufficient funds for bribes if they wanted to survive. A paid evidence taker would hire the right "witness" to say just what was wanted. Juries could be pushed into conviction when all evidence pointed to innocence. Even judges would condemn an innocent man to death, if the price was right.

The jails were notoriously grimy and rat-filled, but for a bribe a thief could get out of jail. A smaller bribe could improve the prisoner's treatment until execution or until the judge could be paid to free that individual.

Early 18th Century was a time when upper class groups like the Mohawks amused themselves by wandering the streets and cutting off ears and noses of helpless people.

Some from the upper class and others enjoyed the common sport of battering off the body of a goose tied by its neck to a tree and listen to its crying or baiting a bear and torturing the animal until it died. No law or organization existed to rescue or protect either the animals or the people harmed. And, of course, there was no legal action against the offenders. Watching a hanging and throwing things and verbal insults at the person executed was great sport.

After the time-line of both books, the real Wild was arrested and executed.

In 2001, Liss won the Edgar Award, MacAvity Award, and Barry Award for A *Conspiracy of Paper*. He wrote his first book while finishing his doctorate at Columbia University. Its success encouraged him to drop the dissertation. To date, he has published four books.

Liss moved away from the historical novel in *The Ethical Assassin*, published in 2006. While amusing, I found it not as good as *Conspiracy*. He promises a third book about Benjamin Weaver in 2009.

It is this reviewer's hope that in his next book, Liss returns to what made his first an Edgar winner, a detailed historical analysis as interesting and as integral to the plot as the story about the lives of Wild and Weaver.

The two books reviewed here are not simply historical tales. I found them relevant to our lives with our stock bubbles and our obsession with reality television. If you didn't read these books when they came out, I recommend them now.

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1. *A Conspiracy of Paper (Random House Publishing Group, 2000) and A Spectacle of Corruption (Random House Publishing Group, 2004)*

jkatz@ag.state.oh.us

Janyce C. Katz, Ohio Attorney General Taxation Section

Courthouse Update

IT'S GOING UP!

By Judge Richard A. Frye

Basement walls and the seven-story elevator shaft for Franklin County's new Common Pleas courthouse at Mound and High streets have taken shape quickly aided by good spring and early summer weather.

Contracts awarded to date have come-in below estimates. However, in early June the County rejected bids for the pre-cast concrete skin of the building. That may prove to be a more expensive component, and re-bidding adds time delay. Completion is now scheduled for fall 2010. The mechanical, electrical and plumbing bids were due in late June, in the range of $30 million. Once those contracts are awarded there will be more certainty about completion of the entire building simultaneously, rather than in pieces by only roughing-in courtrooms on one half of the seventh floor to fit within budget estimates.

Photos by Troy Henley

Classified Marketplace

How fast can you deposit checks?

Well, how fast is your internet connection?

Remote Deposit for your business. Now you can deposit checks 24/7 right from your office. Just scan the checks, validate the totals, then securely send images of those checks for deposit. This is just one of the many features of Business Checking Plus, which features tools to help you manage your cash flow at a discounted rate. In addition, your business gets free online bill payment and online banking. Open an account today. Just stop by any National City branch, visit NationalCity.com/businesschecking, or call 1-866-874-3675.

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EQUAL HOUSING LENDER