COLUMBUS BAR

Lawyers QUARTERLY

SPRING 2013

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"I CAN'T DANCE,

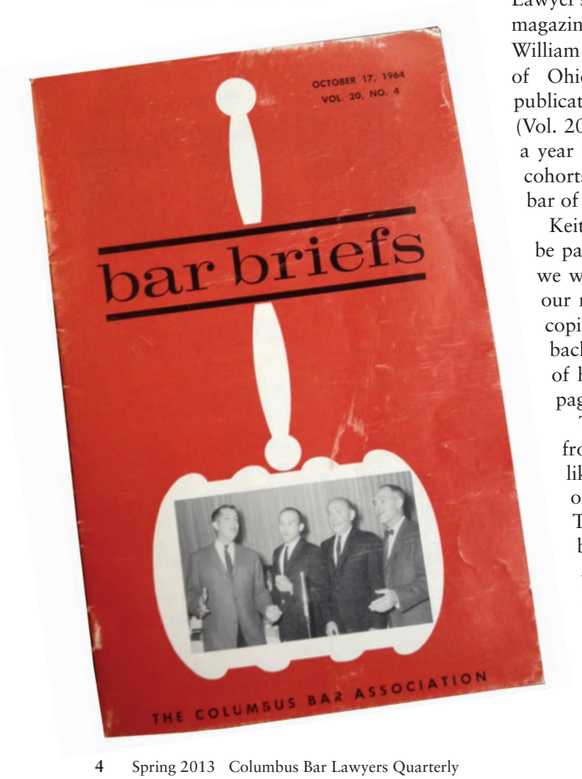
BUT I SURE CAN INTERMISSION"

By Bruce Campbell

Mostly what lands in my lap these days is hot soup, but occasionally a gemstone shows up there unexpectedly. And so it was when Keith Bartlett recently cleaned out his desk at the end of his tenure as administrator of the Franklin County Municipal Court.

Keith and I are related by law firm and the Columbus Bar. I was part of the firm Campbell & Boyland. Years later, Keith became a partner in Boyland & Bartlett after Bill Boyland ended his stint as Municipal Court Judge. Keith also had my CBA job before me.

The desk that Keith was purging recently must have been a piece of hand-me-down, civil-service furniture. Apparently, some of its prior users were not as punctilious as Keith about cleaning out their detritus. Among the things Keith found lurking in the interstices of the desk was a copy of bar briefs (predecessor of Columbus Lawyer's Quarterly). The found magazine was addressed to The Hon. William D. Radcliff, Supreme Court of Ohio, State House Annex. Its publication date was October 17, 1964 (Vol. 20, No. 4). [Incidentally, that is a year before Justice Radcliff and his cohorts foolishly let me slip into the bar of this state.]



Keith thought the magazine should be part of the CBA's collection, and we were pleased to receive it. Even our resident archivist did not have copies of any bar briefs dating back that far. What a nice piece of historical swag is this wee (15 pages, 5"x 8") booklet.

The cover shows four guys in front of a microphone looking like a decidedly uncool version of Sinatra and his Rat Pack. They are later revealed to be barbershop singers William Arthur, Norton Webster, Bruce Lynn and George Chamblin performing at a CBA golf outing. The singing group -- being lawyers -- couldn't agree on a name so they were "known variously as The Promissory Notes' or 'The Cognovit Notes.'" By tradition, this event was always presided over by Gene Mahoney whose humorous trashing of the bench and bar of Franklin County was a local forerunner of the "Daily Show."

On page 2 is an announcement of an upcoming "Induction Luncheon" featuring U.S. Senator John W. Bricker whose name you may have seen attached to a certain local law firm. Senator Bricker was to speak to new law grads on "Every Law Office — An Outpost in the Battle for Human Freedom." The blurb observed that the speech "should serve as an inspiration to the young men [no women!?!] being inducted into the practice of law." Given the heating-up of the war in Viet Nam at the time and the looming prospect of a draft lottery, the word "inducted" might have struck a sour chord with the fledgling barristers.

Succeeding pages yielded other gems. Justice Wm. Radcliff (there he is again) was going to speak on the "first complete revision of the Supreme Court Rules of Practice in 82 years." At that rate the Rules should not have needed attention again until 2052.

A reprinted ABA Journal article by a University of Colorado law professor examined the issue, "Can Lawyers Trust One Another?" The author bemoaned the fact that, in the heat of legal combat competing lawyers were too often pushing aside "trust and confidence" regarding opposing counsel. He lamented about "these days of crowded dockets and delayed justice" and theorized that, if lawyers could just trust each other more, litigation could be expedited and the logjam broken. He would be pleased to know that his dreams have finally become reality and that all lawyers are now civil, court dockets are dwindling, and justice is speedy.

Classified ads appear on page 6: "Local law firm in general practice seeks young attorney. Will pay a salary. No experience needed" and "Lawyer seeks young attorney. Rent free in exchange for legal research." Most of the ads these days seek candidates who have clerked for at least one U.S. Supreme Court Justice, been a Rhodes Scholar and have vast experience in a lucrative field of practice.

A full page is devoted to a cartoon "drawn expressly for bar briefs" by a Dispatch artist. It shows two cocktail waitresses and an old guy in a fur coat and straw hat with a cane lurching (letching) toward them and being held back by one of the women. Caption: "Look out for these lawyers in their Friendly Fifties!" The inclusion of this cartoon just goes to prove that even then the CBA had an unwavering commitment to the improvement of the public perception of lawyers.

That brings us to the centerfold -- 8 headshots of the Ohio Supreme Court Justices up for reelection and their opponents. Not exactly SI's swimsuit issue.

The remainder of the rag is taken up by a report on a noon luncheon discussion on reapportionment (some things never change), ads (e.g. The Suburban Stores for Men "Your clothes are always on trial") and various pat-a-back acknowledgments of donors to various causes.

If you are wondering about the title of this article, that is what appears -- seemingly unrelated to anything else in the publication -- on the last page of the magazine. Guess you had to be there.

Bruce@cbalaw.org

Bruce Campbell, Columbus Bar Counsel

Bridging Troubled Waters

What have we done for you lately?

This year, we're moving Columbus Bar inc to the same suite as the Columbus Bar. It's important to have our inc participants accessible and visible to the thousands of bar members we have visiting our space every year.

By Jill Snitcher McQuain

I recently attended the National Association of Bar Executives meeting in Dallas.[1] It was a good session, focused largely on the pressing issues of the day, namely the sharp decline in law school admissions (down 38% since 2010), the changing dynamics of the profession (technology, the economy, globalization), and the growing number of copyright issues facing bar associations. All things with which I could relate. But one thing struck me more than any other…a roundtable discussion on "What have you done for your members during this tough economy?"

It was a good discussion, and I think we can be proud of what we have done since 2008, when the economy took a dramatic turn for the worse. In 2009, we instituted CLE Easy Pass, through which members can get 12 hours of CLE for $100. In 2011, we started Columbus Bar inc, an award-winning incubator program for new law grads experiencing difficulty in finding employment, but who are willing to go it alone. In 2012, we lowered dues for approximately 70% of our members and gave new lawyer members a pass for free training. And, we formed a new partnership with Anderson Court Reporting, to allow our members to save money on services they use virtually every day.

The CLE Easy Pass continues to appeal to over 1,000 Columbus Bar members. Last year, we raised the price to $125 in the wake of higher delivery costs all around. Yet still, our members realize that this is a valuable economic savings. It's the functional equivalent of getting nine hours of free CLE – a savings of over $350 per person.

On top of that, we restructured dues last year, simplifying the stratification to a two-tiered system: $150 for those in practice five years or less; $250 for those in practice more than five years. Government attorneys continue to receive a discount of $50. This resulted in a dues reduction for 70% of our membership. For new lawyers required to take the Supreme Court sanctioned New Lawyer Training, we made it free – so new lawyers get a full year of membership and 12 hours of New Lawyer training for one low price of $150.

Columbus Bar inc continues to garner national recognition. We are acclaimed as the only bar association in the country to have initiated a lawyer incubator program.[2] And, I cannot begin to tell you how gratifying it has been. The program could not have been possible without the support of members – law firms, lawyers, and judges have donated furniture, money, and their time to help the new attorneys. We even have a number of lawyers and law firms referring cases to our "inclings" to help them get started. Not a week goes by that I don't get a call or an e-mail from someone wanting to help. It's truly remarkable.

This year, we're moving Columbus Bar inc to the same suite as the Columbus Bar. It's important to have our inc participants accessible and visible to the thousands of bar members we have visiting our space every year. This move will allow us to save a significant amount of money on rent for the inc space, so we can expand the program to reach more new lawyers. inc ltd recently launched to allow an additional twenty new lawyers to take advantage of the services Columbus Bar inc offers. Those accepted to inc ltd. will have access to virtually all of the benefits, with the exception of an office.

We've come to realize that, in the ever-changing wireless world, more and more people are finding they don't actually need the overhead expense associated with an office. And though our physical space limits the number of participants we can accept into the inc program, with inc ltd., we can help far more beyond these walls.

We remain committed to delivering exceptional value for your membership dues in 2013. We're focusing on a number of projects, like considering how best to continue delivering the Columbus Bar Directory in a world of eroding print media. The Directory is routinely lauded as one of the biggest benefits of Columbus Bar membership, used by both lawyers and non-lawyers alike. So, developing an improved format that continues to appeal to a wide array of audiences is important.

We'll also be devoting attention to healthcare reform – both in terms of its impact on our members and on our own association plan, CBS Agency, Inc. Regulations and guidelines are being released every week, many of which raise more questions than they answer. In a culture of uncertainty, one thing is for sure: there is definitely going to be a sea change in the insurance market.

And, over the summer months, we'll be renovating our space. Not only will the space have a more modern look, but it will include more modern amenities such as updated (and upgraded) A/V capabilities, as well as more accessible electrical outlets to power all those devices our members bring. We're also trying to make the space more versatile, to accommodate the increasing number of meetings, events, and seminars. The past couple of years have brought more and more members to the "Neighborhood Bar." We like that people like coming here, and we want to make your visit with us more comfortable and hospitable so you'll continue coming back "where everybody knows your name, and they're always glad you came…."[3]

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1. NABE is a division of the American Bar Association.
2. There are a number of law schools establishing incubator programs; but no other bar associations.
3. Where Everybody Knows Your Name, by Gary Portnoy and Judy Hart Angelo

jill@cbalaw.org

Jill Snitcher McQuain, Executive Director, Columbus Bar

EMAIL TO THE EDITOR *ET ALII*

New Message

Send Chat Attach Address Fonts Colors

To: Columbus Bar

Subject: Fall 2012 Columbus Bar Lawyers Quarterly

To Whom It May Concern:

I write in response to Jason Dolin's article, Law Schools: The Real Employment Numbers for the Class of 2011, which appeared in the Fall 2012 Columbus Bar Lawyers Quarterly. In calculating the "% of 2011 Grads Employed in Full Time/Permanent/JD Required Jobs - THE REAL EMPLOYMENT RATE," Dolin inexplicably used different formulas for different law schools. Specifically, for 3 of the 8 law schools reporting the relevant information, including Cleveland-Marshall College of Law, Dolin used as his denominator the "Number of 2011 Grads Whose Status is Known 9 Months After Graduation" and for the other 5 he used the "Number of Grads Employed at Anything." As a result, Dolin understated Cleveland-Marshall's real employment rate by nearly nine percentage points--crediting us with a 51.6% rate rather than the correct rate of 60.5%.

This is the second year in a row that Mr. Dolin has inaccurately reported information related to Cleveland-Marshall, having done so in an article in the Ohio Bar Journal in Fall 2011. Our law school's prompt compliance with Dolin's voluminous annual information requests consumes substantial time and resources from the law school administration and the Cleveland State University General Counsel's Office. In return, we think it is not too much to expect that Mr. Dolin will be diligent, consistent, and fair in his use of that information in presenting statistics that are heavily relied upon by prospective students in choosing a law school. We would appreciate the Lawyers Quarterly correcting the record on this matter in its next issue.

Sincerely,
Craig M. Boise
Dean and Professor of Law
Cleveland State University,
Cleveland-Marshall College of Law

New Message

Send Chat Attach Address Fonts Colors

To: Craig Boise

Subject: Re: Fall 2012 Columbus Bar Lawyers Quarterly

Dear Dean Boise:

Dear Dean Boise: I received a copy of your letter regarding my article in the Fall 2012 Columbus Bar Quarterly concerning the employment data for the Class of 2011. The data I used for Cleveland State came straight from the report (see below) that Cleveland State sent to NALP and subsequently supplied to me on March 8, 2012. As you can see from this report, Cleveland State reported that 95 of its 185 Class of 2012 graduates had obtained "Bar Reqd./Full Time" employment which, Cleveland State itself calculated, came to a rate of 51.6%.

All Graduates for Year(s) Selected		
ALL STUDENTS	185	
Employment Status of Graduates Meeting Dem		
EMPLOY. STATUS KNOWN	184	
TOT. REPT. EMPLOYED	157	85.3%
Bar Reqd./Full-Time	95	51.6%

That is the very same percentage that appears in my article's chart for "Full Time/Permanent/JD Required Jobs" for Cleveland State graduates. The data that Cleveland State supplied to the ABA (see below) reported that 93 of its 185 graduates had "Full Time Long Term" employment requiring bar passage. 93 divided by 185 comes to approximately 50%, slightly lower than the 51.6% that appears in Cleveland State's report to NALP.

EMPLOYMENT STATUS	NUMBER	FULL TIME LONG TERM
Employed - Bar Passage Required	104	93

As to your assertion that I used different "formulas" for different schools, my article states that "...I have relied on the raw numbers (and the various employment percentages they represent) as reported by the law schools themselves." The numbers I used, and the related calculations, were reported in my article as the schools reported them to me.

As such, I stand by my article and am sorry that you take exception to the data. I am, however, glad that the article has engendered your interest and look forward to Cleveland State's response to my public records request for the Class of 2012.

Jason M. Dolin
Adjunct Professor
Capital University Law School

Civil Jury Trials

FRANKLIN COUNTY COMMON PLEAS COURT

By Monica L. Waller

Verdict: $272,000.00 ($182,000 compensatory, $90,000 punitive). Breach of Fiduciary Duty. Plaintiff Jeanne Hall in exercise of her power of attorney for Juanita Lephart filed suit against Ms. Lephart's son, Defendant Michael Lephart, alleging that Mr. Lephart failed to properly care for his mother over a period of years and fraudulently converted nearly all of her assets for himself. Plaintiff claimed that Defendant converted over $75,000 from a Salomon Smith Barney account and thousands from her monthly income. Defendant denied the allegations and filed a counterclaim seeking declaratory judgment as to the validity of Plaintiff's power of attorney. He similarly alleged that Plaintiff engaged in fraud and conversion. He claimed that Juanita Lephart was damaged in excess of $25,000 due to Plaintiff's fraud. The jury found in favor of Plaintiff on her claim and on Defendant's counterclaim. Plaintiff's Expert: Unknown. Defendant's Expert: None. Last Settlement Offer: None. Last Settlement Demand: None. Length of Trial: 4 days. Plaintiff's Counsel: Geoffrey L. Eicher. Defendant's Counsel: Tyler W. Kahler. Judge Laurel Beatty. Case Caption: *Jeanne Hall v. Michael Lephart, et al.* Case No. 10 CVH 11493 (2011).

Verdict: $7,500.00. Breach of Fiduciary Duty. In October of 2006, Kathleen Cook, Wilma Justice and Ann Kirk-Kelley formed a company called KanWi, LLC, which provided services for disabled adults. Each was a 1/3 member and each had responsibilities for the daily operations of the business as described in an operating agreement. Within approximately six months after the business began operations, disagreements arose about the expansion and growth of the business. Cook alleged that Justice and Kirk-Kelley began taking steps to push her out of the business. In September of 2008, the members entered into negotiations to buy out Cook, but were unable to reach an agreement. Cook alleged that, during negotiations, Justice and Kirk-Kelley covertly formed a competing business called Life Builders. In December of 2008, Cook resigned her position in the daily operations of the business but asserted that she was maintaining her ownership interest in KanWi. The following month she began operations of All R Friends providing the same or similar services as KanWi. Justice and Kirk-Kelley alleged that Cook's formation of all R friends, LLC was an improperly competing business, and that Cook began actively soliciting clients from KanWi for that business. Justice and Kirk-Kelley began operations of Life Builders six months later in the same location, same assets, and with the same clients as KanWi. Cook alleged that, after her resignation, Justice and Kirk-Kelley excluded her from all business decisions regarding KanWi, ceased all distributions to her and increased their own distributions. Cook sued Justice and Kirk-Kelley on behalf of herself and KanWi for breach of contract, breach of fiduciary duty, breach of duties of care and loyalty, self-dealing, fraudulent concealment, violations of R.C. 1705.25 and various related claims. She also asserted claims against Justice, Kirk-Kelley and Life Builders for unjust enrichment and tortious interference. Justice, Kirk-Kelley and Life Builders counterclaimed against Cook, also for breach of contract, fiduciary duty, duties of care and loyalty, self-dealing and related claims. The also filed a third-party claim against All R friends for unjust enrichment, tortious interference and related claims. Both sides moved for summary judgment. The Court granted summary judgment to Cook on the claim that Justice and Kirk-Kelley violated R.C. 1705.25 by rendering KanWi non-operational. The Court denied both parties' requests for summary judgment on all of Cook's other claims. The Court granted summary judgment to Cook on all of Defendants' claims, dismissing those claims from the lawsuit. The only claims that were submitted to the jury were Cook's claims for breach of fiduciary duty, duties of care and loyalty, self-dealing and fraudulent concealment against Justice and Kirk-Kelley and KanWi's unjust enrichment claim against Life Builders. The jury found in favor of Cook and against both Justice and Kirk-Kelley on the breach of fiduciary duty, duties of care and loyalty and self-dealing claims and found in favor of Life Builders and against KanWi on the unjust enrichment claim. Plaintiffs' Experts: Rebekah Smith (business valuation), valued Cook's 1/3 share of KanWi at $218,000. Defendants' Experts: Brian Russell (business valuation), valued Cook's share of KanWi at $0.00 based on the clients that went to All R friends, LLC. Last Demand: *Withheld.* Last Settlement Offer: *Withheld.* Length of Trial: 6 days. Counsel for Plaintiffs: Michael R. Traven and Jessica L. Davis. Counsel for Defendants: Derek L. Graham and Barry A. Waller. Judge John Bessey. Case Caption: *Kathleen M. Cook, et al. v. Life Builders, LLC, et al.* Case No. 09 CVH 14368 (2011).

Continued on page 10

Continued from page 9

Verdict: $4,242.02. Automobile Accident. On November 19, 2007, Defendant Kelly Gainor failed to stop behind traffic at the intersection of Sawmill Road and Sawbury Boulevard causing a chain-reaction collision that resulted in a rear-end impact to a vehicle driven by Plaintiff Tracie McGarity that pushed Ms. McGarity's vehicle into the vehicle in front of her. Plaintiff claimed injury to her right foot, right knee, right leg, lower back and neck. Defendant did not contest negligence, but disputed Plaintiff's injuries. Defendant claimed that Plaintiff had pre-existing problems in her right knee, right hip, back and neck arising out of a series of unrelated injuries and degenerative changes. Defendant also pointed to a subsequent unrelated accident. Plaintiff's expert opined that the accident caused Plaintiff's pre-existing problems to flare-up and become symptomatic. Defendant had Plaintiff examined by her expert who concluded that Plaintiff sustained a cervical and bilateral trapezius sprain and strain, lumbosacral sprain and strain and a left knee contusion. He found no right knee injury. The jury awarded $1,242.02 in economic damages and $3,000.00 in non-economic damages. Medical Specials: $17,371.63. Lost Wages: Unknown. Plaintiff's Expert: Emily Yu, M.D. Defendant's Expert: Gerald Steiman, M.D. Last Settlement Demand: $35,000.00. Last Settlement Offer: $3,324.00. Length of Trial: 3 days. Plaintiff's Counsel: Shawn Dingus. Defendant's Counsel: Edwin Hollern. Magistrate Ed Skeens. Case Caption: *Tracie McGarity v. Kelly Gainor*. Case No. 09 CVC 15941 (2011).

Defense Verdict. Automobile Accident. Defendant Jazmine Joyce was traveling west on Fulton Street when she collided with a taxicab driven by Defendant Abdirashid Hagi that was headed northbound on Fourth Street. Plaintiff Hunter Sully was a passenger in Ms. Joyce's vehicle. Hunter Sully sued Ms. Joyce and Mr. Hagi alleging that both were negligent and caused the collision. The intersection where the accident occurred is controlled by a traffic light. Both Ms. Joyce and Mr. Hagi alleged that they had a green light. Plaintiff Hunter Sully and another passenger in Ms. Joyce's vehicle also testified that Ms. Joyce had a green light. The parties stipulated that Plaintiff Sully's damages were $35,000 and proceeded to trial on liability only. The jury returned a verdict in favor of both defendants and against Plaintiff Sully. Plaintiff filed a motion for a new trial, which was granted. Both defendants appealed. The Court of Appeals affirmed the trial court's decision and the case went back for a new trial. The case was re-tried and the jury again found in favor of both defendants. Plaintiff's Expert: None. Defendant's Expert: None. Last Settlement Demand: None. Last Settlement Offer: None. Length of Trial: 2 days. Counsel for Plaintiff: Brett Jaffe. Counsel for Defendant Hagi: Barry Littrell. Counsel for Defendant Joyce: Joseph Erwin. Visiting Judge Alan Travis. Case Caption: *Hunter Sully v. Jazmine Joyce, et al.* Case No. 2009 CV 12902 (2010 and 2012).

Defense Verdict. Automobile Accident. Plaintiff Jerry Dowell, Jr. was traveling on Georgesville Road on December 6, 2008 when his vehicle was struck on the passenger side by a vehicle driven by Defendant Sandra Herron. Emergency medical personnel evaluated Mr. Dowell at the scene but he declined their offer to transport him to the hospital. The following day he went to the emergency room and was diagnosed with two compression fractures. He followed up at Franklin Park physical medicine and had several physical therapy sessions which provided no relief. Six months later he followed up with his family doctor. Although Mr. Dowell had prior back problems, he had not received medical treatment for that condition for more than 18 months prior to the automobile accident. Ms. Herron did not contest negligence but disputed the injury. Ms. Herron had Mr. Dowell evaluated by her expert who concluded that the compression fractures were due to congenital defects and unrelated to the subject accident. Medical Specials: $5,064.18. Lost Wages: Unknown. Plaintiff's Expert: Paul Oppenheimer, M.D. and Richard E. Gibbons, M.D. Defendant's Expert: Joseph Schlonsky, M.D. Last Settlement Demand: $27,500.00. Last Settlement Offer: $5,000.00. Length of Trial: 3 days. Counsel for Plaintiff: Charles H. Bendig. Counsel for Defendant: Angela M. Fox. Judge David Cain. Case Caption: *Jerry Dowell, Jr. v. Sandra Herron, et al.* Case No. 09 CV 10694 (2011).

Defense Verdict. Automobile Accident. On May 29, 2008, Plaintiff Sarah Hewitt was stopped in traffic on Easton Way when she was rear-ended by a vehicle driven by Defendant Erik Neely. The force of the collision pushed Plaintiff's vehicle into the vehicle ahead of her. Plaintiff claimed that her face struck the steering wheel fracturing her teeth and knocking them out of alignment. She claimed that she had to wear braces for six months as a result. Defendant stipulated negligence but disputed Plaintiff's claimed injury. Medical Specials: $3,845.00 in past medical expenses and $3,000.00 in future medical expenses. Lost Wages: Unknown. Plaintiff's Experts: Stephen Burke, D.D.S., M.S. and Gerald Brown, D.D.S. Defendant's Expert: None. Last Settlement Demand: $7,500.00. Last Settlement Offer: $3,000.00. Length of Trial: 2 days. Plaintiff's Counsel: Jessica L.S. Kimes and David Ahlstrom. Defendant's Counsel: Matthew Timperman. Judge Magistrate Michael Thompson. Case Caption: *Sarah Hewitt v. Erik J. Neely*. Case No. 09 CVH 6045 (2011).

Defense Verdict. Automobile Accident. 61-year-old Thomas Cline was driving a tractor-trailer with double trailers westbound on State Route 33 in the right lane when Jessica Beardsley attempted to pass him on the left. Road conditions were icy and Ms. Beardsley lost control of her vehicle, spun out, hit a guardrail and struck the rear tire of Mr. Cline's semi causing it to overturn. Mr. Cline claimed that he sustained a torn medial meniscus when his knee struck the steering column. Ms. Beardsley admitted liability but disputed Mr. Cline's claim that the injury was related to the accident. Medical Specials: $12,632.00. Lost Wages: $12,000.00. Plaintiff's Experts: Brent Holtzmeier, D.O. (family practice) and Peter Edwards, M.D. (orthopedics). Defendant's Experts: Walter Hauser, M.D. (orthopedics) and Doug Morr, M.S. P.E. (biomechanical engineer). Last Settlement Demand: $42,000.00. Last Settlement Offer: $15,000.00. Length of Trial: 3 days. Plaintiff's Counsel: Dennis P. Evans. Defendant's Counsel: Brian J. Bradigan. Judge Daniel Hogan. Case Caption: *Thomas L. Cline, et al. v. Jessica C. Beardsley, et al.* Case No. 09 CV 18402 (2011)

2012 A Year in Review

Based on data collected from the Franklin County Court of Common Pleas Office of the Jury Commission and the Franklin County Clerk of Courts Office, the following statistics have been compiled which provide a snapshot of civil jury trials for 2012: Juries rendered verdicts on 59 civil actions in 2012.

23 of the 59 jury trials involved automobile accidents – more than any other category of civil action.

- **4 of these jury trials resulted in defense verdicts. 19 resulted in plaintiff's verdicts.**
- **The damages awarded to plaintiffs ranged from $3,700 to more than $140,000.**
  - *(Compared to a range of $1500 to over $53,000 in 2011.)*
  - *11 of the 19 plaintiff verdicts were over $10,000.*
  - *(In 2011, 7 of the 16 plaintiff verdicts were over $10,000.)*
  - *The average of these jury verdicts was $36,353. The mean was $12,000.*
  - *(The average of the jury verdicts in 2011 was $14,046.)*

In 2 of the 19 cases, the breakdown between economic and non-economic damages was not available. For the remaining 17 cases:

- There were 3 trials in which the jury awarded no non-economic damages.
- There were 8 trials in which the award of non-economic damages was less than 50% of the economic damages.
- There were 4 trials in which the award of non-economic damages was equal to or more than double the economic damages.
- There were no trials in which the award of non-economic damages met or exceeded three times the economic damages.
  - *(Comparative figures were not compiled in 2011.)*

3 medical malpractice cases were tried to verdict in 2012. Defense verdicts were awarded in 2 cases. There was a hung jury in the third.

- (By comparison, 7 medical malpractice cases were tried in 2011. All 7 were defense verdicts.)

There were 9 jury trials in cases involving breach of contract claims.

There were 9 workers compensation cases tried.

There were 2 jury trials each based on breach of fiduciary duty, premises liability and dog bite claims.

There were 9 jury trials involving other miscellaneous civil matters including legal malpractice, foreclosure, conversion, lemon law, workplace assault, employment discrimination, fraud, construction and complex litigation.

**The list of civil trials was derived from a list of cases for which jurors were requested from the Office of the Jury Commission.*

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Monica L. Waller, Lane Alton & Horst

Not even a Speeding Ticket?

By Amy Koorn and Jameson Rehm

"Not even a speeding ticket" wrote Rick Marsh on the cover page of one application. His concise description conveyed one end of the bar applicant spectrum. On the other end are the applicants who require a second interview with a second team, which is meant to address areas of concern that range from debt management to rule violations, perhaps plagiarism or OVI. Most applicants, however, fall somewhere in between with at least some subject matter to discuss at their interview. This article aims to inform the bar of the trends in Admissions that the Committee sees and to share some of the challenges the Admissions process poses.

First, by way of explanation, the Columbus Bar Admissions Committee and other local bar associations throughout the state serve as a conduit for the Supreme Court and conducts applicant interviews with persons seeking admission to practice in Ohio. The Columbus Committee interviews applicants with a residential address located in Franklin County. In addition, Columbus receives applications from the majority of out-of-state applicants, both students and attorneys seeking admission without exam. Since January 2011, Columbus has handled 851 applications.

When applications are received at the Columbus Bar from the Supreme Court, they are assigned to an interview team consisting of two members of the Admissions Committee on a rotating basis. The team is tasked with arranging and completing the interview with the applicant, in person. There are no exceptions to the across the desk interview rule, even for Rick Marsh's applicant who had not even a speeding ticket in her history. This often becomes a sore spot for applicants who do not live locally, particularly attorneys admitted in another state. Every bar exam brings at least one applicant to the state for the sole purpose of meeting an interview team to confirm in a twenty-minute meeting that she or he is fit to practice in Ohio, and there are no updates to report. Thus, while technology can ease many an ill in the practice of law with Lexis apps and e-filing, it cannot get anyone admitted; there is no provision in Gov. Bar R. 1 for Skyping a character and fitness interview.

Following the interview, each interviewing attorney completes a report sheet that is returned with the application to the Columbus Bar, and then to the Court. The report parallels Gov. Bar Rule 1 and asks the interviewing attorney "whether the applicant's interview and record of conduct reveal any of the facts listed, such as commission or conviction of a crime; evidence of an existing chemical (drug or alcohol dependency)," and so on for all of the factors outlined in the Rule. The interviewing attorneys are expected to mark the box "yes," or "no," and if the answer is yes, provide an explanation on the space provided, or attach a summary if necessary. The Court relies on this report to flush out any potential trouble spots. This means if an applicant has an open container violation from his or her undergrad years, the interviewing attorney would mark "yes" in the box next to "commission or conviction of a crime" and, in the space provided, explain the situation and why it does or does not bear on the applicant's present fitness to practice law.

An ever-increasing number of applications include responses from applicants that show financial stress that prompted the applicant to file bankruptcy and/or have debt overdue for more than 90days. The Court looks carefully at an applicant's financial responsibility. As recently as 2011, the Court has reiterated applicants must demonstrate, that despite having debt, they have a plan to reasonably and responsibly handle it. (*In re: Griffin*. 2011-Ohio-2). This decision has had the practical effect of prompting Admissions Committee interview teams to solicit credit reports and/or budgets from applicants who have a debt record. Needless to say, this adds a layer, and usually a good hour of preparation for an interview with an applicant who has old debt. Typically, the debt is either result of the recent economy, or youthful indiscretion in expenditures. In both instances, the vast majority of applicants who have had greater debt loads are approved because it is an issue that he or she has resolved responsibly, and/or has a plan to handle it. In any event, it is an area of inquiry impacted by the rising cost of tuition, and a tough job market, and exacerbated by the housing bubble – especially for the applicant who has recently divorced and sold the marital residence, as an example.

The recent development of oil and gas mining in Ohio is another economic force driving the admission of out of state attorneys. Many of the applicants seeking admission without exam hail from states like Texas and Pennsylvania with a history in mineral rights. Firms in those states are looking to expand their practice and mining companies drilling in eastern Ohio looking for experienced lawyers in the field draw attorneys with a background in the area. For most of these applicants, the maxim "time is money" presses these applicants to request an interview as early as possible and to closely monitor their application. Fortunately for most of these applicants, their good standing in another state streamlines the interview and, save the few weeks leading up to a bar exam deadline, the Committee accommodates the press of business.

This leads to the final, most important intention of this article: to express gratitude to the many members of the Committee who do the work of the Court. Without willing members committed to thoroughly reviewing the application materials and meeting with hopeful Ohio attorneys, the admission to practice would be a very different creature. The responsibility for ensuring attorneys who are admitted possess the character and fitness to practice law is delegated by the Court to future colleagues for good reason. It is in our own best interest to ensure the candidates are deserving of clients' trust, speak truthfully to tribunals, and advance the integrity of the profession.

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REDUCING GUN VIOLENCE AND THE SECOND AMENDMENT

By Douglas L. Rogers

"Too many children are dying," Gabby Gifford correctly testified recently before Congress. Of course, too many adults have also died from gunfire.

In fact, there were approximately 120,000 homicide firearm deaths in the United States from the beginning of 2001 through the end of 2010,[1] more than all the deaths of U.S. soldiers overseas during that time. The number of suicides through the use of guns was even higher.[2] The Second Amendment to the U.S. Constitution does not prevent the adoption of proposed federal legislation directed at reducing the number of deaths from gunfire.

In the landmark 2008 Supreme Court decision, *Heller v. District of Columbia*, Justice Scalia said that "the right secured by the Second Amendment is not unlimited," and there is no right 'to keep and carry any weapon whatsoever in any manner whatsoever and for whatever purpose."[3] Justice Scalia explained, "[W]e do not read the Second Amendment to protect the right of citizens to carry arms for any sort of confrontation, just as we do not read the First Amendment to protect the right of citizens to speak for any purpose."[4]

In *Heller* Justice Scalia gave some examples of "presumptively lawful regulatory measures," adding that the list "does not purport to be exhaustive."[5] He said that "nothing in our opinion should be taken to cast doubt on longstanding prohibitions on the possession of firearms by felons and the mentally ill, … or laws imposing conditions and qualifications on the commercial sale of arms."[6]

In the Supreme Court's 2010 decision of *McDonald v. City of Chicago*, Justice Alito repeated that the Supreme Court was not suggesting that laws forbidding felons and mentally ill individuals from carrying any gun, or "laws imposing conditions and qualifications on the commercial sale of arms,"[7] violated the Second Amendment. *Heller* and *McDonald* make it clear that the existing federal law that prohibits the sale of a gun to any person convicted of or indicted for a felony and anyone who is mentally ill does not violate the Second Amendment, and background checks are necessary to enforce those laws permitted by the Second Amendment.

Federal appellate courts have agreed that the Second Amendment permits laws to prevent dangerous individuals from purchasing guns. For instance, in *United States v. Skoien*, the United States Court of Appeals for the Seventh held, "Congress is not limited to case-by-case exclusions of persons who have been shown to be untrustworthy with weapons, nor need these limits be established by evidence presented in court."[8] In *Moore v. Madigan*, the Seventh Circuit held that "empirical evidence of a public safety concern can be dispensed with altogether when the ban is limited to obviously dangerous persons such as felons and the mentally ill."[9]

Bans on assault weapons and large ammunition clips also pass Second Amendment muster. In *Heller*, Justice Scalia said this country adopted the Second Amendment to protect the types of guns in common use for defensive purposes. Justice Scalia added that Second Amendment protection of the sort of weapons in common use at the time "is fairly supported by the historical tradition of prohibiting the carrying of 'dangerous and unusual weapons.'"[10] He also noted that in 1939 in *United States v. Miller* the Supreme Court similarly said, [T]he Second Amendment does not protect those weapons not typically possessed by law-abiding citizens for lawful purposes …."[11]

Semi-automatic assault weapons with clips holding more than 10 bullets are dangerous weapons not typically used by citizens for defensive purposes and are not analogous to any weapon in existence at the time of the adoption of the Second Amendment. Although a few people have argued that such assault weapons could be used for defensive purposes, they have not pointed to a single incident in this country in the last 50 years where such a weapon and clip have been used for defensive purposes.

Semi-automatic assault guns with ammunition clips of more than 10 are undeniably dangerous weapons not typically used in this country for defensive purposes. They are not protected by the Second Amendment, just as Justice Scalia in *Heller* indicated that the similar M-16 rifles are not protected by the Second Amendment.[12]

The Second Amendment does not stand in the way of a federal law that requires a background check on any sale of a gun, bans ammunition clips of more than ten bullets and bans semi-automatic assault weapons. Congress should vote on the proposed legislation taking such action, while knowing that the legislation is fully consistent with the Second Amendment right of citizens to carry arms for self-defense.

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1. http://webappa.cdc.gov/cgi-bin/broker.exe
2. http://webappa.cdc.gov/cgi-bin/broker.exe
3. 554 U.S. 570, 626 (2008)
4. 554 U.S. at 595
5. 554 U.S. at 627
6. 554 U.S. at 626-627
7. 130 S.Ct. 3020, 3047 (2010)
8. 614 F.3d 638, 641 (Fed. Cir. 2012, en banc).
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10. 554 U.S. at 627.
11. 554 U.S. at 625
12. 554 U.S. at 627

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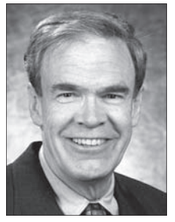

Douglas L. Rogers

Arizona SB 1070 – *Back to the Drawing Board*

By David S. Bloomfield

Support Our Law Enforcement and Safe Neighborhood Act, better known as Arizona SB 1070, was enacted by the Arizona legislature and signed into law by Governor Janice Brewer in April 2010. The Arizona law was meant to create "self-deportation," the politically correct terminology for "attrition through enforcement" as a policy towards immigration in the United States.

Four of its provisions were challenged by the U.S. Department of Justice (and others) in Arizona v. United States that the U.S. Supreme Court eventually decided on June 25, 2012. Simply put, the argument by the government was that federal law constitutionally preempted Arizona from enacting four specific provisions in SB 1070 because those provisions were essentially immigration laws reserved exclusively to the federal government, not the states. The Court stated as a preliminary matter in the syllabus: "Federal law specifies limited circumstances in which the state officers may perform an immigration officer's functions."

The Court overturned those four provisions of SB1070. Though the first of these provisions was sent back to the District Court for further factual consideration, Section 4 (B) allowed local law enforcement personnel to stop a person for a "valid reason" and thereafter develop a "reasonable suspicion" that the one stopped was not legally in the United States. The Court determined that local officials could properly determine one's identity and his/her status in the U.S. before releasing the person. However, the Court stated that this provision could be unconstitutional depending on how Arizona implemented it. The Court stated that if Arizona laws enforcement officers stopped someone only to determine status or if they held someone solely for immigration reasons, enforcement of (and thus enactment of) Section 4 (B) would violate the U.S. Constitution.

Section 3 of the Arizona law made it a crime in Arizona for an undocumented individual not to have "registered" his/her status with the federal governments. Arizona would then prosecute the individual for a violation of federal immigration laws. The Court held that the Constitution preempted Arizona from enacting such a law.

Section 5 (C) of the Arizona law made it a state crime for someone not authorized to work in Arizona if that person was not authorized to work in the U.S. under federal law. Thus an individual would be prosecutable under state law for a violation of federal immigration laws. The Court again held that the Constitution preempted Arizona from enacting such a law.

Section 6 of the Arizona law permitted local law enforcement officers to arrest someone where probable cause existed that the individual committed a crime in any jurisdiction in that world, if committed in the United States, would be grounds for deportation of the individual. Among other reasons, the Court struck down this provision, because the Arizona law required no warrant even though a federal officer would need a warrant under the same circumstance to enforce the federal law. Additionally, for the state to enforce such federal law, it would need prior approval from the federal government of act (a section 287 agreement). The Court also rejected Arizona's argument that local law enforcement has an inherent authority to detain persons who have violated federal immigration laws.

Justice Kennedy authored the majority decision. He explained the reasons for the use of the preemption doctrine of the Constitution in this case. "Perceived mistreatment of aliens in the United States may lead to harmful reciprocal treatment of American citizens abroad." Further, he explained, "it is fundamental that foreign countries concerned about status, safety, and security of nationals in the United States must be able to confer and communicated on this subject with one national sovereign, not with 50 separate states."

The Court was not unsympathetic to the frustration of the states nor with Arizona for attempting to deal with immigration enforcement issues but nevertheless stated: "The state may not pursue policies that undermine federal law."

The case was an appeal from a District Court decision that enjoined Arizona from enforcing the four above-mentioned provisions of SB 1070. The effective date of the decision is July 27, 2012. Section 2 B of the Arizona law is currently subject to additional litigation.

What does the future hold for state immigration laws? The Court has ruled on the four Arizona provisions. Congress could always pass laws that would materially alter this decision but that likelihood does not appear realistic given the current situation in Congress especially given the number of Hispanic voters that some credit for enabling the president to earn a second term.

The elections of November 2012 have indicated that the country wants immigration reform. Republicans in the Senate have proposed a "slow go" approach, but the White House has rejected that approach. It remains to be seen whether the new Congress can agree on any immigration legislation or if it will be just like the prior stalemated Congress. If the latter, expect more Presidential memos such as the Deferred Action for Childhood Arrivals and more state attempts to legislate immigration "reform" on their own ala the Arizona law.

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Hall of Justice Will Live Again

By late next year, the new HOJ will have its first tenants – the Adult Probation Department on the fourth and fifth floors and the Law Library back on the tenth floor.

By The Honorable David E. Cain

David S. Bloomfield, Bloomfield & Kempf

For nearly two years, the Franklin County Hall of Justice (HOJ) has appeared to be reposed in moth balls.

Not so. Since last summer, 50 to 80 workers have labored behind the scenes – the lower façade is covered with plywood – to remove interior walls and ceilings and to water blast asbestos from the steel girders and concrete slabs. The HOJ is now a shell, a skeleton with each of the ten floors consisting of nearly 18,000 square feet of wide open space.

By late next year, the new HOJ will have its first tenants – the Adult Probation Department on the fourth and fifth floors and the Law Library back on the tenth floor.

For a "serious abatement process" it's been really smooth, James A. Goodenow, director of Franklin County Public Facilities Management, commented. Despite the potential for grumbling about noise and possible exposure, there was "not one complaint" (from the hundreds of employees in adjacent buildings), he noted.

The escalators are gone, along with the old lobby overhangs, making the first floor available for conference and meeting rooms along with an enlarged security control center, Don Wheat pointed out. Wheat is a vice president at Pizzuti Solutions, the provider of owner representative services for the County Commissioners since 2006 when planning began for the new courthouse.

Continued on page 18

Continued from page 17

The Common Pleas Court moved from the HOJ at 369 South High Street to the new courts building at 345 South High Street in June, 2011. Shortly thereafter, Wheat began meeting with various county agencies – more than 30 in all – to ascertain their present and future space needs. The larger operations – such as the Domestic Juvenile Courts, the Prosecutor's Office and the Public Defenders – will stay in the Franklin County Courthouse Tower (FCCH) but will benefit from the other agencies moving out. The Probation Department, for example, currently has the 10th and half of the 11th floors of the tower as well as part of the fifth floor in the municipal court building that is owned and operated by the City of Columbus and adjoins at 375 South High Street. So the agencies remaining in the tower will have room for expansion as others move to the HOJ.

The Law Library is temporarily on the sixth floor of the Municipal Court Building and will be going back to the 10th at the HOJ since it was originally engineered to handle heavy stack loads, Wheat said.

After the blasting, workers hand cleaned the concrete and steel, making the interiors of all floors in the HOJ look like new construction, Wheat said. Floors two and three and six through nine will remain open spaces to be built-out as agency growth in the tower so requires and the budgets so allow. The abatement work finished up about the end of February and installation of a fire suppression system began.

Bids will be opened in late May and early June for electrical and some of the mechanicals, Goodenow said. By September, 2014, the HOJ will have all new skin as well, he added. All the outside glass will be replaced with double-pane "smart glass," a feature that will help tie in the HOJ with the new courts building (across Mound Street to the north), Wheat said.

All the construction is to be completed by August, 2014, so the county can meet its commitment to vacate its space in the municipal court building by September and the city can follow its own renovation plans.

Gayle Dittmer, the chief probation officer, said she is looking forward to having the department's 118 employees in the same building and on adjacent floors. Currently, some of the department's 6,000 probationers have to go to the municipal building for drug screens and/or the Day Reporting Program. Some don't make it from one building to the other. Ms. Dittmer also noted that first floor meeting rooms will be welcome amenities. "Right now we have to plan so far in advance to reserve space for training (in the tower facilities)."

The HOJ project budget is about $45 million. It leaves only "build out" costs on individual floors for future years. That's still much cheaper – at least 50 percent lower – than building new, Wheat declared. And, the HOJ in the master plan allowed the new court building to be smaller than originally assumed, he pointed out. One of the findings in the master plan is that long term growth of most administrative agencies will be much slower than the growth of the courts and agencies associated with the legal system, Wheat added.

The HOJ use concept is for a "judicial services and amenities" building, Wheat said. Other ideas for space use in the HOJ include housing the municipal court's probation department, setting up an assessment center for repeat offenders, establishing mediation and victims centers and creating an intake area for persons seeking civil protection orders.

"This positions Franklin County to be able to implement new programs. Space is available in the right location. Many counties don't have that," Wheat asserted.

As the HOJ starts looking much better, the jail sitting behind it stands to look even worse. Goodenow said the county will be doing some outside cosmetic work on that facility (since it is in such a visible position) while a legal battle continues with a former contractor.

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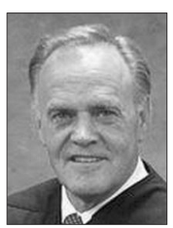

The Honorable David E. Cain, Franklin County Common Pleas Court

The Inevitable and Overdue Evolution of Law Schools

By Michael Corey

Ambiguous ambitions have induced thousands of students to matriculate in law school over the years, but at no time have juris doctorates had such an ambiguous future. As Jason Dolin revealed in his fall 2012 piece for this publication, law schools are producing more attorneys and more student debt than there are jobs and compensation. Awareness of this fact has spread, resulting in a precipitous decline in applications to law school. As of late January, applicants to ABA law schools were down twenty percent from a year ago, and down thirty-eight percent from 2010. At that rate, the number of overall applicants would fall below 60,000 for the first time in 30 years.

Those who have already taken the leap, be they law students or new attorneys, are generally an unhappy lot. They are frustrated with a choice that had promised desirable employment, but now promises fewer choice jobs than ever before.

Law schools are finally getting the message – some better than others – as law school deans have begun experimenting with reforms– some grander than others – to make law school more accessible and more functional.

"I think there has been inertia, but we're moving into a period where schools have to do something," explains Deborah Merritt, a professor at the Moritz College of Law and the author of Law School Café, a new blog that is tracking the evolution of law schools. "Now I think the number of applicants is down so substantially, while law schools are still struggling to help their graduates find jobs, that everyone recognizes that changes have to be made. But it's hard to figure out what those changes should be."

Changes are being tried in several ways, primarily what is taught in law schools, and for how long.

Though the key benefit of law school is surely the ability to think like a lawyer, the applications of this skill are in need of far more practical cultivation than most law schools are currently equipped or willing to provide. For decades, new lawyers underwent the equivalent of remedial coursework while employers prepared legal minds for a legal body of work. Restraints on time and money have made such a learning year undesirable. In their stead, clinics, externships, fellowships, and transformations of the third-year experience all show promise. But the change is coming too slowly and must be far more integrated into law school curriculums to have a sufficient effect.

In the meantime, time and money are lacking for too many new attorneys. And so, some reformers are pursuing a shortening of the law school experience altogether. In New York, deliberations continue over allowing law students to take the bar exam after two years rather than three. And in Arizona, students can now take the bar exam in the middle of their third year.

But those changes, no matter how effectual they might be, cannot overcome the declining demand for new attorneys, and the rising cost of becoming attorneys.

In terms of demand, the problem is the same one that has plagued so many other professions: just as technology has minimized the manpower needed to build a car, so too has it decreased the manpower needed to research a legal question. And while I doubt the legal profession will approach the dire straits that nearly undid Chrysler and General Motors – can you imagine the indignation over a lawyer bailout? – I do believe a similar realignment is coming to law schools that will allay many of the frustrations the current crop of nascent lawyers has experienced.

Class sizes must continue to shrink and tuition must follow suit until a manageable equilibrium is reached. Law schools know this, but know not how to accomplish the former without foregoing the latter. It's time to get creative.

One possibility is already transforming education. It is subverting one of the adages of schooling – the need for marble teaching in wooden halls rather than wooden teaching in marble halls – by tearing down the walls altogether and bringing marble teaching to thousands of students through cyberspace. Once the province of start-ups like the University of Phoenix, online education has gained credibility and more structure since being embraced by the old guard of Harvard, Stanford, and so forth.

Continued on page 20

Continued from page 19

"There is a new world unfolding, and everyone will have to adapt," explained M.I.T.'s President L. Rafael Reif in a recent interview with The New York Times about the far-reaching evolution the Internet is bringing to higher education.

And law schools will be no different.

Bar exam prep companies have already caught on, using smartphone apps and streaming video and interactive forums to train students as a complement and as a replacement for the expenses now being circumvented. Indeed, online education offers flexibility that brick and mortar education does not. And improving access to more students will inevitably increase access to high-performing students.

There is no single answer to improving legal education for the times, of course: it will require movement on several fronts, a process Professor Merritt calls "unbottling legal education."

"Right now we serve one product, the JD," she says, "and it's very rigid. You have to come full-time for three years and follow this curriculum. That's too much education for some types of legal tasks, and too little for other types."

Restructuring legal education opens a Pandora's Box, but it is a necessary exploration. The ambition must be to continue advancing the profession that so many of us have chosen, and will continue to choose, in our careers of service to clients large and small. But we will need more than an ambiguous ambition to find the answers we need.

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The Winding Path to Partnership:
Advice to Help You Along the Way

Certainly there are a lot of pitfalls on the road to becoming a partner in a law firm, big or small. I don't pretend to have the answers to avoid them all. What I do have is my own limited experience and the experience of several friends and colleagues whose stories helped shape this article.

By Josh L. Schoenberger,
Williams & Petro

If there is one thing that associates can agree on, it is that there are no guarantees on the path to partnership. Your seven-year partnership track might become a nine-year track without much warning. You may discovery there are two tiers of partners, those with votes and those without. You might squeeze out every last billable second, only to discover factors completely out of your control have made it financially untenable for the firm to take on additional partners.

Certainly there are a lot of pitfalls on the road to becoming a partner in a law firm, big or small. I don't pretend to have the answers to avoid them all. What I do have is my own limited experience and the experience of several friends and colleagues whose stories helped shape this article. The following is some advice for young associates to consider as your path towards partnership unfolds.

The best and worst advice on how to make partner is the same: get clients. It is the best advice because it is absolutely true. If you have clients, especially the kind that pay, your firm will think twice before passing you up for partnership. If they don't want you, someone else will. They will likely make the good business decision to make you partner, rather than watch clients take their money elsewhere. It is also the worst advice for young associates because of the remote chances you will have to obtain partnership level clientele early in your career. I recall being given this advice several times early in my career, as if I should just go down to the Client Store to pick up a couple.

Please don't misunderstand; you should work towards the goal of expanding the firms' client base. Join networking groups, attend seminars and seek business from whatever connections available. Even if you do all that, you still may not be able to obtain new business at a level that would garner partnership consideration. The current economic climate leaves more attorneys competing for less work. Work towards obtaining new clients, but understand the inherent challenges you will face.

You are much more likely to expand current business than obtain new clients early in your career. Therefore, you need to take a hard and critical look at how you are getting work in your firm. The ideal situation is to work for a partner in the firm who gives you client contact and who wants to pass down work so he or she can go out and get the next client with his or her substantial connections. This person may retain ultimate client control, but does not possess the time to service clients' day to day needs. In this scenario, you get ample legal experience along with invaluable client contact. If the partner you are working for values the skill and ability you bring, he or she should welcome your increased role and be happy to share in the responsibility for maintaining and expanding a particular client.

There are other benefits to this scenario. As you gain more client contact, you increase

Continued on page 22

Continued from page 21

your own opportunity for referrals within the particular client industry. Next, an individual from a particular client corporation may take a new job and seek to work with you in the future. Internally, your ability to adequately serve one client will encourage other partners to give you similar responsibility with other existing clients or include you in pitches for new business.

Unquestionably, this is the ideal situation. If you find yourself five years into your practice without any real client contact, you have to ask yourself why. Perhaps the client only wants to have a single reporting attorney on the account. Maybe the work is so sophisticated and complex that it requires communication only on the most senior levels. But it might be that the partner you work for has no intentions of providing you with any client contact because he or she has no intentions of ever allowing you to assume any responsibility for the client. You may find yourself in a situation where you spend a majority of your time working with this partner, leaving very little time to develop relationships with other existing firm clients or obtaining new business. If you find yourself in this situation, you may want to seek consultation with a trusted member of your firm about your concerns for your future if you continue to work in this manner. You may find reassurance or you may find that it is time to redefine yourself by seeking work from other partners.

Don't be afraid to ask questions about partnership early in the process. If you work at a large firm, the partnership track will likely be well-defined and readily available for your review. If you work at a small to mid-sized firm, the path to partnership will likely be more ambiguous. My first job after law school was as an associate at Williams & Petro. I knew very little about practicing law and knew even less about what it meant to be a partner in a law firm. My first review went reasonably well, which is to say that I hadn't committed malpractice or lost any clients. My firm had no defined partnership track, but at the end of my first review I asked what I had to do to make partner. Although I certainly wasn't worthy of consideration at that time, I worked for partners who were at least willing to consider the possibility and set benchmarks for my progression. They also gave me client contact opportunities and encouraged marketing to both existing clients and for new business.

Let your firm know if you have a desire to be a partner. You may work somewhere that has no plans of taking on additional partners and they should be forthright with such intentions. But if they consider the possibility, ask them for goals that go beyond your billable hour requirement. Aggressively seek to meet the stated goals and then ask for a new set of goals. Your firm should appreciate your ambition and, if they are earnestly setting goals of value, your case for partnership will be made by meeting and exceeding their expectations.

Understand that partnership might be a moving target. The number one complaint I hear from my peers is when their firm "changes the game." Don't be surprised if the partnership track that is explained to you during your summer at the firm is not the partnership track in your third year of practice. This is not to say that some firms are inherently evil, pulling a bait and switch on a young associate. A law firm is a business. Leadership can change, just like in any corporation, bringing with it a new set of standards. Attorneys can leave the firm and take with them clients that impact the firm's ability to take on partners. Firms become "partnership heavy," leading to the inevitable slowing of the pace in which the firm will accept new partners. Whatever the reason, be prepared for potential frustration in your pursuit.

Find a champion for your cause. You can work hard, bill big hours and do all the right things in your development as a young attorney. However, you won't be in the room when the decision makers are discussing your career. If the right people don't recognize your accomplishments, you may be overlooked. That's why it's important that you develop a relationship in your firm with someone who is willing to "go to bat" for you. This person doesn't need to be brash and outspoken, but it is important to have a respected member of the firm who is willing to speak on your behalf. Whether your champion is the managing partner or someone willing to write you a fair review and endorsement, find someone who will ensure your story is told.

Make sure you want to be a partner. This might sound strange, but many people are so driven that they never take the time to consider if being a partner is something they really want. When considering whether partnership is something you truly desire, consider the time commitment, financial implications, and impact on your family. Most important, make sure your bosses are good candidates for partners. If they act with integrity, respect, and fairness towards you as an associate, they will likely meet your approval as a partner. If they act otherwise to you as an associate, consider why you believe it will be different once you are a partner.

In closing, realize that being a good attorney won't guarantee you partnership, but being a good attorney is more important than becoming a partner. The practice of law is full of fantastic attorneys who are not partners in a law firm. In the end, your career won't be defined by whether or not you make partner. Your integrity, knowledge, and skill will be thought of long before anyone considers whether or not you get a vote or a percentage of the business. Let becoming the best attorney you can be guide your career rather than the quest for partnership and you'll likely be very pleased with the results.

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Josh L. Schoenberger

A Recipe for Success: The Importance of Client Service

By Nancy Nicole Workman, Vorys Sater Seymour and Pease

Young attorneys are often inundated with advice on how to deal with their new and challenging careers. During my five and a half short years of practice, this advice has run the gamut from trite and anecdotal to useful and practical. However, insights on best practices in the legal profession have not always come to me in the form of advice. Recently, I have had an experience outside of the workplace that has highlighted the importance of one of the basic tenets of our profession – client service.

I am in the process of buying my first house. To start the process, I did my research and identified a real estate agent with whom I wanted to work. From the first conversation, my real estate agent has been attentive and responsive. She answers all of my questions promptly and with the patience necessary to deal with a first-time home buyer. Those who have gone through this process before know that there can be many starts and stops along the way, which, to an inexperienced buyer, can be a little unnerving. When a few days go by without any action, she emails me just to check in and make sure I am comfortable. Even though I know she is an incredibly busy woman, every time I speak with her, I always feel as if I am her only concern.

In reflecting upon this experience, I have better solidified my understanding of the importance of client service from a career development standpoint. Since the start of my legal career, I have been given frequent advice on the importance of client service; however, until experiencing it from the client side of a transaction, I did not fully appreciate how important it is.

Since the start of my legal career, I have been given frequent advice on the importance of client service; however, until experiencing it from the client side of a transaction, I did not fully appreciate how important it is.

For a younger attorney, "clients" can come in two varieties: (1) clients in the traditional sense, i.e. businesses and individuals who have retained you or your law firm to perform legal services, and (2) partners or other senior attorneys for whom you are working. In either scenario, it is your job to understand not only your clients' needs, but also to perform legal services to the best of your ability. However, it is just as important that you perform these services in a prompt manner and be as responsive as possible to your clients' requests. This may seem like basic advice, but I assure you that being prompt and responsive in your correspondence may set you apart from your peers.

The following are a few techniques that I have learned from my own practice and my experience with other service providers (especially my real estate agent) that I consider to be "best practices" when it comes to client service.

Respond promptly to all emails, especially those in which you are being asked to answer a question or to complete a specific task. Even if you are swamped, a simple note to say "Hello – I have received your email and will get back with you as quickly as possible" is much better than letting the email sit for three days until you have an opportunity to give a thoughtful response.

If you are working on a project that has stalled, send an email to the client to check in from time to time. Do not just sit back and wait unless instructed to do so. A little initiative can go a long way in garnering the trust of a client.

When speaking or corresponding with a client, give the client your full attention, avoid talking about how busy you are (unless otherwise asked) and commit to delivering work product by a certain date (e.g. "I will get you that document next Tuesday") – and then actually follow through.

Finally, if a project is taking you longer than expected, be proactive and communicate any timing issues as early and as honestly as possible. I find that it is much easier to manage client expectations proactively (to the extent possible) by giving periodic updates than to try to explain yourself out of a corner when pressed on the status of a project. There is nothing worse, both professionally and psychologically, than receiving the "where is this?" email and having to explain why a project has not been completed on time.

In the end, a proactive communication practice is an important component of being a professional and, from a client service perspective, is an element of excellent client service. Clients are the only reason we are here, and developing effective client service techniques will help to ensure that you have a long and successful career.

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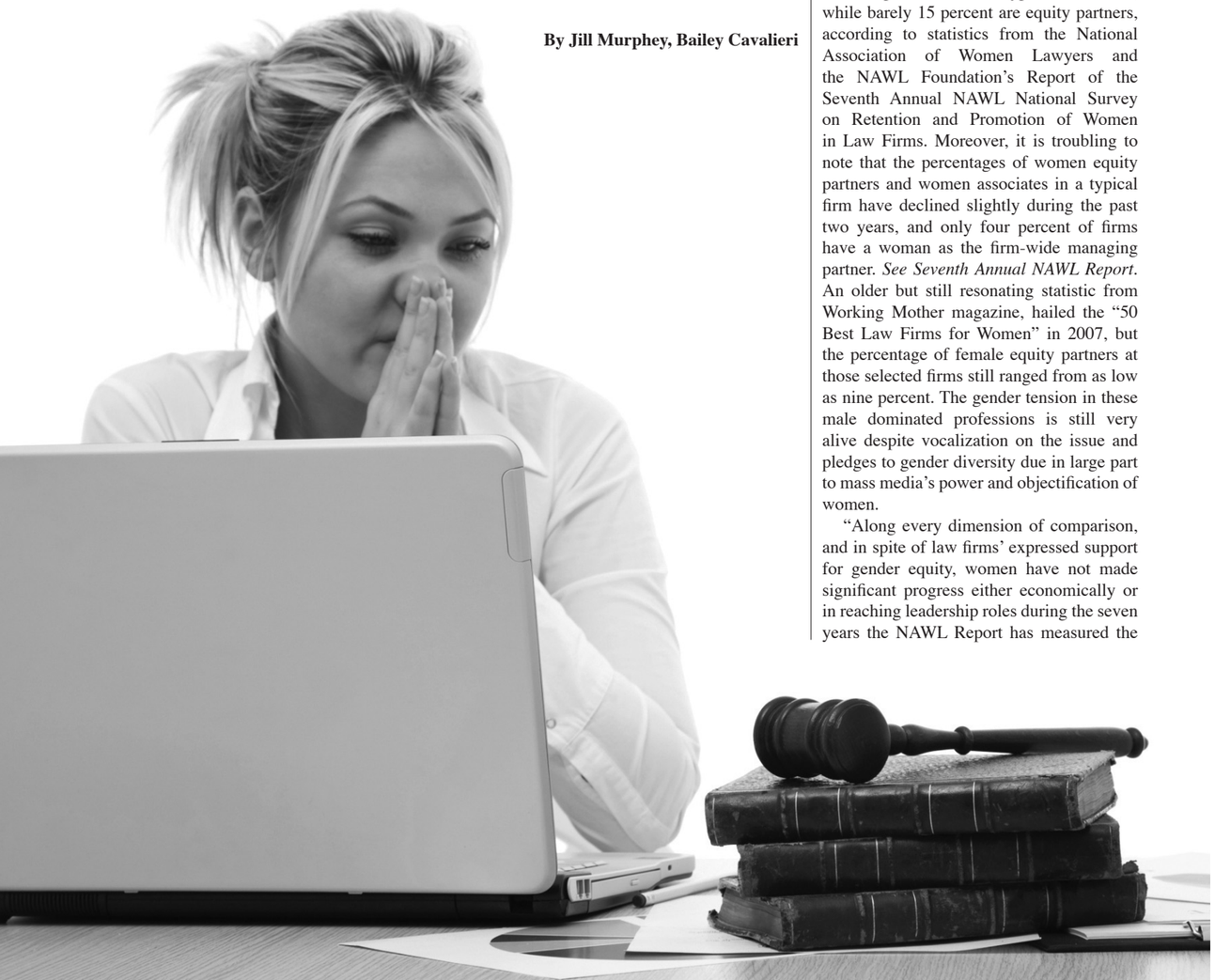
Challenges Facing Women in the Legal Profession

By Jill Murphey, Bailey Cavalieri



Women in the legal profession face an obstacle of just that – being a female attorney. While women have made headway by flooding typically male dominated professions, women have yet to inundate the leadership of those professions. Recently, Sheryl Sandberg, Chief Operating Officer of Facebook Inc., identified an "ambition gap" among women. She states: "The world is still run by men. We're not teaching our girls and women to have professional ambition. We're not encouraging women to lean into their careers and aim for powerful jobs. With only three percent of Fortune 500 companies run by women, we have a real problem." *See 26 CBA Record 40*.

In the legal world, women hold 70 percent of staff attorney positions that are not partner-track at typical law firms, while barely 15 percent are equity partners, according to statistics from the National Association of Women Lawyers and the NAWL Foundation's Report of the Seventh Annual NAWL National Survey on Retention and Promotion of Women in Law Firms. Moreover, it is troubling to note that the percentages of women equity partners and women associates in a typical firm have declined slightly during the past two years, and only four percent of firms have a woman as the firm-wide managing partner. *See Seventh Annual NAWL Report*. An older but still resonating statistic from Working Mother magazine, hailed the "50 Best Law Firms for Women" in 2007, but the percentage of female equity partners at those selected firms still ranged from as low as nine percent. The gender tension in these male dominated professions is still very alive despite vocalization on the issue and pledges to gender diversity due in large part to mass media's power and objectification of women.

"Along every dimension of comparison, and in spite of law firms' expressed support for gender equity, women have not made significant progress either economically or in reaching leadership roles during the seven years the NAWL Report has measured the impact of gender in law firms." *See Seventh Annual NAWL Report*. Women have come too far to stagnate now.

It is not atypical for a female attorney to attend a legally related meeting or networking event and be the only female in the room. Even with some of the largest numbers of women infiltrating the legal profession today as indicated by the above referenced statistics, the majority remain in their offices or cubicles unseen by clients and unnoticed by colleagues. This lack of professional attention also spurs gender bias because women are judged first on their appearance and secondly on their intellect. The lack of first-hand experience with a female attorney perpetuates premature determinations on that female's ability as an attorney by many potential clients and business colleagues.

Unfortunately, breaking this "appearance, first; intellect, second" bias is not an easy task as the media has objectified women, basing a woman's worth in beauty and sexuality. The Women's Fund, here in central Ohio highlighted this media craze that bombards men with images on a daily basis, by sponsoring and advertising a documentary, Miss Representation by Jennifer Siebel Newsom. Miss Representation brings to realization the power of the media due to its continual use in our daily lives, and how the objectification of women then becomes engrained in men (and women), making it nearly impossible to separate the images of mass media from a realistic work environment.

The media, as a driving force, counter acts the efforts of gender diversity committees and action groups by perpetuating the notions that women are objects and thus inferior. The conclusions follow that women simply cannot be rainmakers or bill over 2,000 hours a year, and thus are less able to become equity partners. Those conclusions, which are tantamount in determining whether a lawyer will become an equity partner, then limits the type of assignments and work load women receive. *See Actions for Advancing Women Into Law Firm Leadership (2008), by the National Association of Women Lawyers*. Thus, not only do women combat the "appearance, first; intellect, second" bias, they then combat the work-life bias, that women are not as dedicated or committed as men, even after proving capability and wit. Women do struggle with work-family life balance as they want to plunge into the time commitment of partner tracking while maintaining a cohesive family unit. This is one of the main reasons why women leave private practice in far higher numbers than men. However, struggling with such a balance does not mean women want to work fewer billable hours or receive lower profile assignments. The quote from NAWL's Seventh Annual NAWL Report sums it up best, "Yes, Ms. JD, you can work in BigLaw, but the right to advance, along with profits, professional status and the most interesting projects, are restricted to those who accept 24/7 on-demand mentality in every year of their practice, and the resultant stresses and warping of their lives." Some statistics combating women's apparent lack of business development are the number of women's nonbillable hours that were significantly higher than men's nonbillable hours, as well as women's substantial business development efforts despite smaller books of business than their male counterparts. *See Seventh Annual NAWL Report*.

It's time for action. The first step has already been accomplished thanks to many state and local bar associations bringing awareness and attention to the issue of gender bias. Numerous articles have been written and working groups formed to help combat gender bias in the practice of law. Male attorneys actively working to change their preconceived notions is helpful, but not the only solution to the problem. To chip away at the glass ceiling, women must break down the media portrayal by altering their attitudes towards other women and acceptance of the way women are portrayed by all. This is a struggle that will not be solved over night, but as Sheryl Sandberg alluded to, by pushing the envelope and fighting for those leadership positions in a world run by men, women will actively change that cliché.

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In the legal world, women hold 70 percent of staff attorney positions that are not partner-track at typical law firms, while barely 15 percent are equity partners, according to statistics from the National Association of Women Lawyers and the NAWL Foundation's Report of the Seventh Annual NAWL National Survey on Retention and Promotion of Women in Law Firms.

Avoid Drowning in a Sea of Social Media

By Jade Gummer,
Quintairos Prieto Wood & Boyer

Facebook, Twitter, Instagram, and LinkedIn are just a few of the many social-professional media outlets readily available and often utilized by today's legal professional. Undoubtedly, social media has become a part of everyday life for even the most unsophisticated of smart phone users. Whether it's for real time access, world news, keeping in contact with family members or having a voice on a cornucopia of social and political issues, more and more people are turning to social media. *#TreadLightly.*

Just as social media has become commonplace for individuals it has simultaneously become an invaluable tool for employers seeking to gain insight into "the real you" before making a hiring decision. Thus, in order to avoid drowning in a sea of social media, great discretion, caution, and attention to the content displayed on your page is required.

A recent New York Times article noted an American Bar Association study revealing that only 55 percent of those who graduated from law school obtained full-time jobs that required passage of the bar exam.[1] With that statistic in mind, it is critical not to put anything readily available for public consumption on the World Wide Web that could hinder your chances of being part of that 55 percent. Employers are not the only ones who can and will inquire into your social media "status." Several states now allow bar examiners to investigate applicants' Facebook and other social media outlets to further assess their character and fitness to practice.[2] Suffice it to say that with the average debt for private law school graduates at $125,000, a tasteless Facebook status update or "good time" photograph is no laughing matter, and certainly not worth potentially being denied your livelihood.[3]

Being cognizant of what you post on social media doesn't just apply to those applying for jobs or for admission to the bar. Practicing lawyers should also be aware of the potential pitfalls of social media. The effects of a client seeing a compromising photograph of you can be detrimental. Many, if not all, corporations have extremely strict guidelines for the image of the lawyers that represent them and are not inclined to allow your poor, late night judgment to dilute their brand. Your social media activity may even run afoul of the rules of professional responsibility. Specifically, it can be professional misconduct to engage in any "conduct that adversely reflects on the lawyer's fitness to practice law." [4] Of course this is open to interpretations, we are lawyers after all, but it is not beyond the stretch of imagination how certain uses of social media could put you in an uncomfortable position with the Bar.

Finally, aside from being cautious of how you share your personal life on social media there is also a question of how you conduct business or advertise on social media. Social media can be an extremely cost efficient way to promote legal services to potential clientele "of moderate means who have not made extensive use of legal services."[5] In so doing, it is incumbent upon you to know and have a working knowledge of the Rules of Professional Responsibility governing electronic solicitation to ensure your use of social media is compliant.

As lawyers, we must carefully govern our utilization of social media. Our desire to have freedom of speech in the public domain must be cautiously tempered with the reality of our responsibilities to our respective firms, clients, families, profession, and, most important, ourselves. Guard yourself against the snares and avoid drowning in the sea of social media.

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1. Ethan Bronner, Law Schools' Applications Fall as Costs Rise and Jobs Are Cut, N.Y. Times, January 30, 2013, available at http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-as-jobs-are-cut.html
2. Jan Pudlow, On Facebook? FBBE May Be Planning a Visit, The Florida Bar News, September 9, 2009, available at www.floridabar.org/DIVCOM/JNNews01.nsf
3. Ethan Bronner, Law Schools' Applications Fall as Costs Rise and Jobs Are Cut, N.Y. Times, January 30, 2013, available at http://www.nytimes.com/2013/01/31/education/law-schools-applications-fall-as-costs-rise-as-jobs-are-cut.html
4. Rule 8.4(h) - Ohio Rules of Professional Responsibility.
5. Ohio Prof.Cond. R. 7.2 (see comments)

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Do you know who you are practicing in front of?

By Stephanie R. Hanna,
Staff Attorney to Judge Kim J. Brown

We are lucky to have the opportunity to practice in front of many great judges in Franklin County: 15 Municipal Court Judges, 17 Common Pleas General Division Judges, and 5 Domestic Relations/Juvenile Judges. It can sometimes be overwhelming and difficult for newer attorneys to practice in front of so many different judges. This article will help clear up one lingering confusion as well as provide some pointers for practicing in front of Franklin County's bench.

First, let's clear up one thing. Yes, we have two female judges named Kim Brown(e). No, it is not the same person. It is one thing for the general public to be confused when learning there are two judges with the same name. But, as attorneys practicing in front of these judges on a daily basis, it is our responsibility to get it straight.

Let's start with the basics:

Judge Kim A. Browne is a judge on the Franklin County Court of Common Pleas Domestic Relations Branch and Juvenile Division, where she has served since January, 2002. Prior to taking the bench, Judge Browne served as an associate attorney with the law firm of Maguire & Schneider. Before that she served as the Director of Legal Operations for the Ohio Bureau of Worker's Compensation (BWC) for six years. During her tenure with the BWC, Judge Browne served as the Director of Employee and Labor Relations and as a State Workplace Mediator.

Since taking the bench, Judge Browne has created programs directed at educating and inspiring youth to meet and exceed their own ambitions, such as the Mini-Moot Court Competition for middle and high school students, and the All Rize College tour for at-risk youth. Judge Browne has also served on the Executive Committee of the Ohio Association of Domestic Relations Judges and as a member of the Ohio Supreme Court Rules Advisory Committee.

Judge Kim J. Brown is a judge on the Franklin County Court of Common Pleas General Division, where she has served since January, 2013. Judge Brown grew up in Belmont County in Eastern Ohio and enlisted in the U.S. Naval Reserve on her 17th birthday. After her eight year enlistment, she received an Honorable Discharge and went on to graduate from Otterbein College and Capital University Law School.

Judge Brown began with the law firm of Bricker & Eckler in 1995, and over her 17-year tenure worked on complex litigation matters in the areas of construction, eminent domain, annexation, and medical malpractice. Judge Brown has been inducted as a Fellow in the Litigation Counsel of America, named an Ohio Rising Star, named an Ohio Super Lawyers Rising Star, and voted one of Columbus's Top Lawyers by Business First.

Aside from this unique name situation, you need to be aware of who you are practicing in front of to be a more valuable advocate for your clients. **Do your homework.** For starters, the Municipal Court and both divisions of the Common Pleas Court have websites with judge profiles. This is a great way to do some quick homework before heading in front of a judge for the first time. You can also find other helpful information such as basic courtroom procedures and contact information. Another great way to do your homework is to ask more seasoned attorneys for pointers based on their familiarity with practicing before specific judges. The best teacher is experience and attorneys who have been around longer than you have certainly made mistakes you can learn from. **Call ahead.** If you've done your homework and still have a specific question or a unique situation you need guidance on, call the judge's staff. But don't do it ten minutes before your hearing. More often than not, your question or concern will be met with a friendly answer or helpful suggestion *if* you know when to do the asking. Try to avoid the morning as most court staff are busy helping with the morning dockets. **Leave a (good) lasting impression.** You've heard this one a thousand times, but it might be the most relevant here. Leaving good impressions on your colleagues is important, but not nearly as important as leaving a good impression on the judge and his or her staff. Be on time, be polite, and recognize the fact that your case is not the only one.

For more information about Common Pleas Court Domestic Relations/Juvenile judges, please visit: http://www.fccourts.org/DRJ/judges.html

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Introduction to the Axiom Legal Law Model:

A Viable Private Sector Alternative?

By Jameel S. Turner, Bailey Cavalieri

Due to economic pressures, many new lawyers (not in the top tier of their class) hoping to enter the private practice have little choice but to take the first available job. After a few short years, they become young lawyers who likely have received a sufficient sample of their first job to know whether it is the right fit. In the past, attorneys committed to working in the private sector had few choices with respect to the business model that they wanted to be a part of; either small firm or big firm. But recently a more modern business model is making inroads in the private sector and its success has surprised many – the Axiom Legal business model.

Think about it. Imagine a law firm with no partners, very little office space and a promise to deliver efficient legal work at about half the price of traditional outside counsel. With this unorthodox approach to providing legal services, many experts dismissed its entry into the legal market as an unsustainable business plan. Nevertheless, with $66 million in worldwide revenue in 2011, the Axiom model could signal a change in thought regarding what a modern "law firm" should look like. This change provides a new, fresh opportunity for law students and young lawyers looking to enter the private sector without the pressures of the rat race that can sometimes accompany life in a big or small firm. In that regard, the Axiom model provides an alternative to new lawyers within the private sector career path. Modest salary. No billable hour requirement. No partnership track. Working from your "virtual office" in your home. These factors are extremely attractive to new lawyers who have no desire to work in the public sector but also have reservations about the pressures associated with big firms.

Axiom was founded in 2000 and employs more than 1,000 attorneys worldwide. Most of Axiom's attorneys have previous experience serving as in-house counsel or in the traditional law firm setting. Thus, Axiom is different than a staffing firm that only provides contract-attorney services. Axiom provides project-based work on transactional matters for its clients. In essence, Axiom loans its attorneys to clients per project or per transaction, at much lower rates than those charged by big law firms. Axiom exists in the middle. It has no desire to be the go-to law firm for high risk litigation and transactional matters and the billing rates of its attorneys ($150-$275 per hour) reflect that. What Axiom provides its clients is the experience and skill the clients require for a regulatory or compliance related project – at about half the rates of big firms.

Most experts and in-house lawyers agree that the Axiom model will never replace the traditional role of outside counsel. This is partly due to the fact that Fortune 500 companies are unwilling to "bet the company" on smaller firms and partly because Axiom has no desire to fill that role. This being the case, young attorneys who are not enjoying the traditional law firm experience or who are not officially on the "partner track" now have another option to consider in the private sector. According to Axiom's founder, Alec Guettel, part of the firm's success is related to what it can offer lawyers vis-à-vis the traditional law firm experience. "We offer a pretty nice mix of attributes to lawyers that are hard to get anywhere else – we pay well, we do sophisticated work for exciting clients and there is a variety that you don't get in house. . . more importantly, there's a sense of self direction. We put a lot of energy into empowering people to control their own destinies."[1]

Since Axiom's inception, variations of the Axiom model have surfaced and some law firms have begun loaning attorneys part-time to clients needing in-house assistance but do not have the budget to hire a full-time lawyer. This is good news for young lawyers seeking to get some variety in their first few years of practice. Moreover, attorneys who are able to garner actual experience working directly as in-house counsel (albeit on a short term basis) should attain a better appreciation for the needs of in-house counsel and in theory would be in a better position to provide services as outside counsel.

Regardless of whether you begin your career in the private sector at a big or small firm, the Axiom model provides a new, fresh alternative to young lawyers committed to the practice of law but not committed to the bureaucracy that can go hand in hand with the typical law firm experience. The Axiom model could turn out to be a viable alternative for young lawyers who have lagged behind in the rat race and are interested in gaining a new perspective on the law firm experience and a re-introduction of "life" into the work/life balance.

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1. Taylor, Margaret, "Axiom Legal: New Model Army," The Lawyer, June 16, 2008, available at www.thelawyer.com; last visited February 1, 2013.

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Jameel S. Turner

Mentoring Means the Most

By Eimear Bahnson, Massucci & Kline

When I first started law school I quickly learned my grade would depend on how I measured up against my classmates. It immediately put everyone on edge and many were afraid to ask for advice or help. Ironically, when I first started practicing, I quickly learned that my colleagues and mentors were going to get me through the first few years of practice. As a new lawyer, many of us think we have the requisite skills to practice law. Law school builds our egos and makes us believe we are ready to practice as soon as we pass the bar. Although we may have the basic book knowledge, we really have no idea what we are doing, practically speaking. This is where the guidance of a mentor can be an invaluable asset and an opportunity.

In my short time as an attorney, I have been lucky to have mentors who have helped me grow: substantively, practically and personally. The help has come in numerous different ways. One mentor helped me make a job decision by ditching my type-A pro-con list and listening to my gut. Another mentor helped me with my first hearing and explained to me the procedures of the different judges and magistrates. Another mentor helped me by suggesting a specific motion that could be filed (I had never heard of it) that made the difference in my case. I even had a mentor who gave me a shoulder to cry on when things had not gone as well as I hoped. In each of these scenarios, I had an idea of what I should do, but after asking and discussing it with my mentors, I learned my way was not the best and could have led to some very embarrassing moments! These mentors had all been in my shoes at one point and were more than willing to help point me in the right direction.

The Columbus Bar and The Supreme Court of Ohio have created many opportunities for new lawyers to match up with a mentor. Whether it is for a first-year lawyer in the Ohio Supreme Court's mentoring program or through application to the Association's Columbus Bar Inc., Professional Development Center, there is someone out there to help you. Additionally, many of the CBA committees have also established help for New Lawyers. An example is the Small/Solo committee of the CBA which has organized a group to answer questions and be mentors to those in the solo or small firm practice. All of these programs include individuals who have signed up to participate because they WANT to help you. If you have someone else in mind, just ask! Chances are, if you were to approach a judge, magistrate, or fellow attorney in your area of law, they would be more than happy to help you, answer questions, and reflect on your ideas. Many of these individuals may be right under your nose and you don't even know it!

One of the first mentors I had told me that the practice of law has a 10- year learning curve. When I first heard this I thought it was crazy. I have been practicing for three years, and I still don't think I will have an idea of what I will be doing in the next seven years. I will point out that all of the help I have been given from my mentors has made these three years much easier. I encourage all new lawyers to seek out someone who you admire and respect, and I can guarantee that you will not regret the decision.

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Eimear Bahnson

Protecting Your Reputation with Integrity

By Melissa S. Szozda,
Associate Assistant Attorney General,
Consumer Protection Section

Recently, Lance Armstrong confirmed that after years of adamantly denying what had widely been suspected, he did, in fact, engage in doping throughout his career by using a combination of EPO, testosterone, HGH and blood transfusions. Armstrong's admission was met with indifference from some who had long suspected his doping, to great disappointment from others who believed his denials. Following his admission, the perception of Armstrong changed for many, which serves as a reminder to all of us of the importance of maintaining our reputations.

Reputation as an Individual:

When Armstrong admitted to doping, people questioned his ability as an athlete and as a person. Armstrong was banned from competing and lost a number of sponsors, subsequently resulting in a substantial loss of money and earning potential.

When lawyers' reputations are questioned, their careers are jeopardized. Part of sustainability as a lawyer is recommendations from others and people are less likely to recommend lawyers with negative reputations. Similar to Armstrong, after compromising their reputations, lawyers risk losing current and future clients, and, in turn, risk their livelihoods.

Reputation as a Team:

It is hard to deny that Armstrong created a successful foundation that contributed greatly to fighting cancer. However, the Livestrong Foundation suffered disgrace by association. Following his admission, people questioned if they should keep wearing Livestrong bands; some donors even requested their donations back.

Your reputation can easily be imputed on to your team, specifically your firm or office. By having a negative reputation, others may have preconceived notions about those with whom you work or associate.

Reputation as a Profession:

After Armstrong's doping admission, some people excused his behavior by saying that everyone in cycling dopes, but we know this not to be true.

Lawyers already have a poor reputation even though many are upstanding members of the community. By showing no regard for maintaining a positive reputation, the stereotypes of lawyers are maintained and perpetuated.

As new lawyers, we are all granted a clean slate to build our reputations. The Columbus legal community is small enough for others to know who you are; no one is invincible. Here are some suggestions on how to build and protect your reputation:

Tip 1: Play fair. If Armstrong has taught us anything, it is that no one likes a cheater. It is important to protect your reputation not only with your clients but also with your colleagues. Other lawyers will remember if you do not play fair, and they will tailor their actions accordingly. If you are always skirting the rules, other lawyers will more likely maintain a heightened sense of awareness, wanting to keep tabs on your every move.

Tip 2: Don't be difficult for the sake of being difficult. There is a difference between working zealously and being difficult. If you are intentionally being difficult, expect to have the favor returned, which could make it harder to secure a favorable outcome for your client. People like to help people they like. By being difficult, you create an extra barrier to resolving your case.

Tip 3: Admit your mistakes. Many people were frustrated with Armstrong because he simply would not admit that what he did was wrong; the same holds true for lawyers. Everyone makes mistakes. Your clients, opposing counsel, colleagues, and judges do not care about the excuses. They just want you to admit your mistake and ensure it will not happen again.

Tip 4: Remember, you are a professional even in your personal life. When I first began my job, I was told, "Don't do anything outside the office you wouldn't want published on the front page of The Dispatch." Our personal and professional reputations are not as segregated as we may hope. People will relate shortcomings in our personal lives to our professional lives.

Tip 5: Remember that at some point you will need a favor. Many cyclists claim that Armstrong never tried to help them and was instead abrasive, rude, and cruel. Now no cyclists have publically come to help Armstrong in his time of need. Similarly, if you are not willing to accommodate reasonable requests, do not expect to have requests granted for you. The next time you want to deny a reasonable extension because opposing counsel will be on vacation, remember that you, too, will want to take a vacation sometime.

Chances are your actions will never be as sensationalized as those of Lance Armstrong. However, it is incredibly important that you work to establish and protect your reputation. A good reputation will make you more employable, will make your work life much easier, and will hopefully allow you to sleep a little better at night. Always remain cognizant that your reputation is first and foremost in advancing your career and in advancing our profession as a whole.

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Melissa S. Szozda

Wanted:
Practical Legal Experience

The reality is that many new lawyers are faced with little to no employment opportunities upon graduation, forcing them to open up their own practice or take a non-legal job. All the while, they are not gaining any practical legal experience.

By Britani L. Galloway,
Law Office of Britani Galloway

Graduating from law school and passing the bar exam is such a relief. But just because you have a new degree to hang on your wall does not mean you are ready to practice law. The reality is that many new lawyers are faced with little to no employment opportunities upon graduation, forcing them to open up their own practice or take a non-legal job. All the while, they are not gaining any practical legal experience. Even those who manage to land jobs at small, medium or large law firms still feel that law school did not equip them with the practical tools to practice in today's legal arena. In fact, lack of practical experience is one of the top complaints new attorneys give and receive. It forces them to act upon their instincts and not their experience which can lead to disciplinary complaints or malpractice lawsuits. Luckily, there are several great ways to gain the practical experience every new attorney so desperately seeks.

Lawyer to Lawyer Mentoring

The Ohio Supreme Court's Lawyer to Lawyer Mentoring Program, launched in 2008, elevates the competence, professionalism and success of lawyers through positive mentoring relationships. This program serves as a way for new lawyers to learn valuable lessons from experienced attorneys by offering a variety of ways for the mentor and mentee to participate, including one-on-one meetings, attending Columbus Bar meetings or Continuing Legal Education seminars together. The mentoring relationship helps the mentee improve his or her legal ability and professional judgment, develop his or her practical skills and contributes to a sense of integrity in the legal profession. Each mentee successfully completing the program earns nine hours of new lawyer training credit. This program can create lifelong, beneficial professional relationships.

For more information, please visit www.s

Columbus Bar inc

The Columbus Bar Association offers the Columbus Bar inc program for new lawyers. Jocelyn Armstrong, Columbus Bar inc Administrator, states that the program's intention is to accelerate the successful development of new lawyers. Participating attorneys have access to resources that help them build a solo practice. Through educational programming and interaction with mentors, the program aims to reduce the learning curve and false starts for the benefit of the lawyers and the clients that they serve. As of January 2013, 19 graduates have completed the program or transitioned to full time employment with local law firms and agencies.

A great advantage of the program is the variety of mentoring opportunities. One office of the Columbus Bar inc suite is dedicated for on-site mentors to meet with the attorneys and provide guidance. There is also an option for telecommunication mentoring for mentors who are not able to be on site. The program also solicits practicing attorneys to offer presentations on a wide variety of topics from creating a business plan to learning how to get on court appointment lists.

For more information, visit www.cbalaw.org/resources/jobs/job-seekers/columbus-bar-inc-mentor.php

Informal Mentoring/Practical Experience

Outside of the formal mentoring programs outlined above, a tried and true method to gain practical experience is to observe a courtroom for a day. Simply sitting and watching what is going on around you is a great way to understand the fundamentals of practicing in our courts. Take notes and jot down any questions you have and get answers from the judge or a more seasoned attorney. Coming to CBA committee meetings is a great way to meet attorneys who practice in your field. Asking one of your contacts if you can shadow him or her for a day is an excellent way to gain practical experience.

Although it may be frightening to begin your new legal career, there are many opportunities available to help you gain the practical experience you need to be a confident, competent lawyer.

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Britani L. Galloway

WORKING TOGETHER – FATHER AND SON

By Thomas J. Bonasera

Hold on! The young associate who just walked into my office looks exactly like my son? That just can't be. This associate has a coat and tie on and the assignment he just turned in was done on time. The draft Trust Agreement from first reading appears to be fairly well done and generally, the "homework assignment" was pretty darn good. Yet, I remember raising four sons and my wife, Julie and I, always harping (well, maybe it wasn't harping, it was just encouraging) about getting their homework done and turned in on time.

If you are considering now or in the future of practicing law with your daughter or son, you may experience similar reactions. My advice, if in fact, you are lucky enough to have the opportunity of working together, is "Just Do It" as the commercial says. Don't think about it.

If you are going to do this, ask yourself if your expectations should be higher for your own child than they would be for any other young attorney? Is this unfair to your child? Maybe so, but do not be squeamish about examining the pros and cons of working together. Rules against such working relationships have a good rational basis, as many perceive and always will that there is an unfair advantage being given. As said by Walter Isaacson, the former chairman of CNN and managing editor of Time, "Nepotism is widely condemned, yet even more widely practiced."

Contrary to popular belief in the firm setting, I have found it is easier to set up appropriate procedures to ensure that fair treatment is being given to all, including your child, and that existing perceptions that your child is somehow getting an unfair advantage is guarded against. In the end though, we can't change our name, we can't change our life long relationships with friends and clients, nor do we want to, nor should the firm want to.

In my case, I did not take my own advice and Just Do It. I thought about it. I was with the very fine law firm of Thompson Hine LLP, with great lawyers and close friends. Unfortunately for me, the firm had an anti-nepotism (even the word sounds bad) rule against the hiring of daughters and sons. So, while I was still debating the idea of leaving the comfortable position of being with a great law firm and friends, my son, Michael, was moving on. After graduation, he was fortunate enough to work with and be mentored by other great lawyers and friends such as Kevin Crane, Jack Butler, Jeff Lewis and Jerry Swedlow. During those two or three years, the idea of working together never left me and the more I thought about it, the more I felt it was an opportunity in my lifetime not to be wasted. I felt even more this way after seeing the working relationships that many of my colleagues had in the practice of law, now practicing with their sons and daughters. One of my original mentors, Dick Patchen, is a good example. Other examples of friends and colleagues are Al Cincione, Robert Sexton[1] and others with whom I had conversations, kept coming to mind.

I remember one particular occasion when Michael was still in law school and I was then serving as President of the Ohio State Bar Association. I was lucky enough to visit with the students and faculty in all the law schools in Ohio. I visited Capital University Law School and was giving a talk to the students, which included Michael. This may have been the first time I recognized that maybe it would be fun to practice law with one of my sons, and despite all of the admonitions against doing so and the many firms that have rules against it, it seemed to me even then a wonderful opportunity.

I distinctly remember at that time looking into the law students' faces, including my son, and telling them that, yes, they would someday graduate from law school. Looking into the future, I said they too might be standing in my position, having the distinct privilege of being able to speak to them as a long time practicing lawyer and maybe even being lucky enough to be a leader in their local or State Bar Association. From the students' perspective, I suspect they were more concerned with just graduating. Looking 25 years into the future may have been too much for them, but to me, looking back 25 plus years was just a flash, reminding me that time really does fly by! That is when I first thought seriously about the possibility of working together. Are there concerns? Of course there are and should be.

Included among some of the concerns of working together was whether or not the dual role of a son and an associate would work, and whether or not as a father being used to telling your children that they are doing something wrong and/or something right all comes naturally. In fact, now that we are working together, I say too often that he is doing something wrong too many times, but I hope not in a harsh way because I expect and I know that my expectations are far greater for him than others. Unfair to him, maybe it is. I am still not sure I should argue against having a higher standard and expectations. If any of you reading this have advice to offer, let me know, but I think we all demand and expect more of our children and the practice of law certainly is serious business. Attention to detail, of course, but always demand professionalism and ultimate dedication to those that we serve, our clients.

Pretty simple, isn't it? With all of my/our frailties and faults, I must say, this advice has worked.

My advice to others thinking of a parent/child practice: First, you have to like each other and get along. You have to enjoy the company of each other and have a clear understanding of our roles. This is particularly so in a larger law firm where that perception of favoritism and always being in the limelight of your child getting a break because he or she is just that, your child. We need to be sensitive to the perception.

So, eventually, with much trepidation and sadness at leaving good colleagues and great friends, I made the move and joined another firm that did not prohibit parent/child working relationships. While Michael may have regretted it (and may still), I must say that I have not. As time goes by and I now look back on the decision, I should have taken my own advice sooner and not thought about it and just done it.

If our children receive as much satisfaction from the practice of law that I so far have enjoyed and hope to continue for many more years, then I know we will have happy and productive careers.

Oh – by the way – I have a special intercom system just for my son and it really works well. "MICHAEL – GET IN HERE – I HAVE SOMETHING NEW TO REVIEW . . ."

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1. During the entire time I was preparing my notes and thoughts for this article, I was thinking of Robert Sexton, who passed away in a tragic accident while on a fishing trip in Canada. For all of you who knew Bob and know Tom, his son, you likely also know, as Bob told me on a number of occasions, he so very much enjoyed practicing law with his son.

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New "Legal Trust" Will Attract Clients In or Out of State

Ohio will have the shortest statute of limitations in the country. A creditor of the transferor whose claim existed before the qualified disposition has eighteen months after the qualified disposition or six months after he could reasonably have discovered the disposition to file an action to void it.

By Brian C. Layman and Charles H. McClenaghan

In the last edition of the WealthCounsel Quarterly, Steve Oshins provided an overview of Domestic Asset Protection Trusts and James Kalicki examined Nevada's DAPT statute (known as a "Legacy Trust"). The authors of this article were involved in the drafting and passage of the law and were invited to meet the Governor when he signed the bill. Beginning March 27, 2013 Ohio becomes the first state in the Midwest to offer DAPT's. Ohio incorporated the best provisions from other jurisdictions and has already received national recognition for being a top-tier statute.[1]

Ohio's law incorporates provisions common in other jurisdictions. An Ohio Legacy Trust must be in a written instrument, incorporating the laws of Ohio governing its validity, construction and administration, be irrevocable and contain a spendthrift provision. There must be at least one Ohio trustee who has custody of the assets, maintains the trust records or materially participates in the management of the trust.

In many cases, practitioners look to the quantum of proof, statute of limitations and exception creditors to determine in which jurisdiction to situs a DAPT. In each of these categories, Ohio's statute will be at the top of a practitioner's list.

Ohio sets limits on a creditor's ability to void a disposition to a Legacy Trust. The creditor will not be able to set the disposition aside unless he proves that the disposition was made with the specific intent to defraud the specific creditor bringing the action. The creditor is required to prove his claim by clear and convincing evidence. This is the highest standard of proof in civil cases.

Ohio will have the shortest statute of limitations in the country. A creditor of the transferor whose claim existed before the qualified disposition has eighteen months after the qualified disposition or six months after he could reasonably have discovered the disposition to file an action to void it. The new law also incorporates a centralized filing system for personal property. By filing and recording a qualified disposition, a creditor is charged with notice. This will start the period for deemed knowledge or discovery of a transfer. Therefore, a settlor of a DAPT can effectively have an eighteen-month statute of limitations for an existing creditor. The authors believe that Ohio will have the first centralized filing system for personal property in the country. In addition, a creditor whose claim came into existence after the qualified disposition has eighteen months to file an action to void the disposition. Most DAPT jurisdictions have statutes of limitation ranging from two to four years.

The exception creditors that Ohio allows are limited to domestic relations. A settlor's spouse, former spouse, or children can attach an interest in a Legacy Trust for child support, spousal support or alimony and the division of property (but the spouse must have been married to the settlor at the time of the qualified disposition). These are common exception creditors in most states. However, some states go far beyond these exceptions and allow exceptions for such things as governmental claims and tort creditors.

Ohio further protects its Legacy Trust by providing that if a court takes action in which it refuses to apply Ohio law, then a qualified trustee who is party to the action shall cease to be a trustee of the Legacy Trust. This deprives the court of jurisdiction over the trust.

Practitioners are also careful to analyze the state income taxes associated with the situs of an irrevocable trust. Ohio does not assert income tax on Legacy Trusts established by individuals who are not Ohio residents unless one of the beneficiaries is an Ohio resident.

When the Ohio Legacy Trust is compared to DAPT's of other states, it becomes clear that Ohio provides as much or more protection than most of the other states. Ohio will be one of the best states in the country to create a DAPT. The new law also has incorporated provisions to allow an asset protection trust from another jurisdiction (foreign or domestic) to "move" the trust to Ohio and have Ohio law govern. As estate planning and asset protection practitioners, we invite you to review the Ohio Legacy Trust to determine whether it will meet the needs of your clients. We are confident that it will.

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1. Mark Merric and Daniel G. Worthington, Domestic Asset Protection Trusts: Which Jurisdictions are the Most Effective to Set Up this Powerful Tool?, Trusts & Estates (January, 2013).

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Brian C. Layman, Layman D'Atri & Associates, and Charles H. McClenaghan

How Are Your Investments Seeded?

By Roger S. Balser

The Spring daffodils poking their heads up is a clear sign the college basketball season is beginning to wind down and the celebrated NCAA Division I Men's Basketball Tournament often nicknamed "March Madness" is right around the corner. People all over the country will be scrambling to fill out their brackets and cheer on their favorite teams.

For the uninitiated, the tournament begins with 68 teams and operates in a knockout format, concluding with just one team left standing after three emotion-filled weeks and 67 exciting games.

It's also the foundation for recreational office pools and bracket tournaments shared among friends and family. As these fun-loving participants fret over their brackets and debate which of their favorite teams has the talent to make it to the finals, included in everyone's selection process is each team's designated "seed" which shows where the team is ranked in their region and overall.

The NCAA began seeding teams in 1979 as a way to ensure that the strongest teams didn't meet each other early in the tournament. The seeding also gives the average sports fan a starting point from which to make their picks as well.

Let's not kid ourselves, no matter how diehard a basketball fan you are, you are also an attorney, and you don't have time to follow 68 teams throughout the season. Further, you have no idea who those 68 teams are at the beginning of the season.

The Process

Selecting the teams you believe will advance in your bracket is biased. For instance, being born and raised in Northern Ohio I give preference to those teams in the Big Ten conference merely because those are the teams with which I am most familiar. .

I can say with confidence that this is no way to make prudent investment decisions. I am not the most astute college basketball fan in the world, but I would consider myself to be somewhat knowledgeable in that arena. While the Big Ten is arguably the best overall conference in college basketball, having a "hometown" bias does not always improve one's odds during "March Madness," nor does it necessarily help one's investment returns in the financial markets. The most sound investment decisions that I have ever made have been based completely on objective, (as opposed to subjective) information.

History of Games Won

With this in mind I'll share a few observations from analyzing the NCAA brackets for the past six years to ascertain how often those highly ranked teams win. To win the tournament, you must win six games. The chart below demonstrates how many games the top-ranked teams have won over the past five years as compared to all of the lesser ranked teams.

Continued on page 36

Continued from page 36

Selecting teams to win the NCAA tournament is the same as picking investments for your portfolio. The intent is to identify the investments with the greatest likelihood of outperforming the overall market.

The most objective tool I have found to do this is relative strength. Incorporating relative strength into your portfolio analysis will force you to invest in the right areas of the market, (like the Energy sector from 2000 to the middle of 2008). But possibly, and more important, relative strength will force you to get out of investments that aren't working, (like the Equities market in early 2008).

So don't scoff at the person who fills out brackets based entirely on seeds. They're playing the percentages, whether or not they realize it. This goes a long way to explaining why the winner of the office pool is usually the person who knows little or nothing about basketball. (Chances are, it's also the person everyone else turns to for help with the photocopier or retrieving voicemail messages).

No matter what method you choose to complete your bracket, enjoy the Tournament. It truly is the Mardi Gras of American sporting events year after year.

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Roger S. Balser

TAKE A CHANCE!

By Lloyd E. Fisher Jr.

The opening of the Scioto Downs Racino and the Columbus Hollywood Casino are the latest local manifestations of the long-standing human fascination with games of chance. History records card games in ancient China and the Roman Empire had dice games and betting on chariot races.

Colonial America was divided. Puritans in the Massachusetts Bay Colony banned the possession of cards, dice, gambling tables, dancing and singing. But the Virginia Company used lotteries to help finance the settlement at Jamestown Colony – it even had instant winners! All thirteen of the original colonies had some form of lottery to help raise government funds.

After the Declaration of Independence, the Continental Congress established a ten million dollar lottery to help pay for the war but the tickets didn't sell well. Lottery proceeds also helped finance Harvard, Yale, Columbia, Dartmouth, Princeton and William & Mary colleges. In 1823, Congress authorized a private lottery to finance the improvement of the District of Columbia but the organizers stole the money and the winner was never paid.

As settlers moved West in the 1800s, the term "riverboat gambler" became a symbol of the frontier spirit and New Orleans developed into a gambling capital. Although anti-gambling sentiment grew during the mid-1800s, the California Gold Rush created a whole new generation of chance-takers. In about 1895, the first slot machine was invented in California and gambling entered the machine age.

By 1910, the opponents of gambling had gathered strength and there were only three states that allowed horse race betting but illegal gambling still flourished. During the Prohibition era, New York Governor Thomas Dewey gained fame by cracking down on the mobsters engaged in both gambling and bootlegging. Fiorello LaGuardia, the mayor of New York, posed for newspaper pictures while using a sledge hammer on illegal slot machines.

Nevada authorized most forms of gambling in 1931 and the state became a center for organized crime figures. By the 1960s, most of the larger Las Vegas and Reno casinos were being operated by legitimate investors and the "Sin Cities" featured more family entertainment.

New Jersey passed casino legislation in 1977 and Atlantic City aspired to be the Las Vegas of the East Coast. Two years later, the Seminoles became the first Native American tribe to embark on a commercial gambling operation. Of the 565 federally-recognized Native American tribes, about 240 operate some form of gambling facility. There are about 700 Indian and privately-owned casinos located in 41 states. The two largest casinos in United States, each of them occupying about 300,000 square feet, are both operated by Indian tribes and are located in Connecticut. These operations are dwarfed by the 550,000 square feet Venetian Casino in Macao, China.

Ohio was organized under the Northwest Ordinance of 1787 and the Ohio Constitution of 1803. Both of these documents were silent on the subject of gambling. During the Prohibition – Depression era, a group called the Mayfield Mob ran both illegal bootlegging and gambling operations in Eastern Ohio.

In 1973, the voters approved an Ohio lottery and the first drawing was held in August, 1974. The lottery profits were permanently allocated to education in 1987. The Ohio lottery now ranks about ninth in total revenue among state lotteries. Charitable bingo games were approved in 1975 and are under the jurisdiction of the Ohio Attorney General.

Some of the early losing efforts to legalize some gambling in Ohio included a 1990 proposal for a casino in Lorain, a 1996 vote on a riverboat casino that lost by 62% margin, and a 2006 amendment to authorize two casinos in Cuyahoga County that also failed. In 2009, Ohio voters approved the construction of casinos in Toledo, Cleveland, Cincinnati and Columbus. The proposal won by a margin of 53% of the total vote but it carried only 29 of the 88 counties.

Ohio has also authorized race tracks and racinos. The lawmakers and the Ohio Attorney General are now looking at several hundred unregulated operations around the state that are called internet cafes. Customers buy a prepaid card and use it to play games at computer terminals that resemble slot machines. Legislation has been introduced that would give the Ohio Casino Control Commission regulatory authority over the "cafes."

Forty-eight states now have some form of legalized gambling – the exceptions are Hawaii and Utah. Whether Ohio's fledgling commercial gambling industry will generate the tax revenue that some have projected is an open question. In the meantime – the dice will roll – and the public will hope that compulsive gambling does not become a societal problem. Good Luck!

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THE ART OF LOSING

By Mark Lewis

"Ever tried. Ever failed. No matter. Try again. Fail again. Fail better."
— Samuel Beckett

A Lawyer Blunders

Some twenty years ago, a feckless young lawyer nearly lost his first client. He had negotiated what he assumed was an unusually handsome settlement offer with obvious appeal and needing no explanation. And so, the lawyer provided none. Nor in his haste did he allow the client to ask questions, all the while asking none himself. Instead, he jauntily announced the dollar figure. Then he smiled and waited for his client's certain gratitude. But her eyes narrowed. Crease-lines etched her brow, marking her face with misunderstanding, or worse, mistrust.

In his next case, the lawyer's self-absorption in the merits of his motion rushed him to secure an ex parte order against opposing counsel, denying her the chance to explain or defend. It was a short-lived procedural victory at the cost of a long-term professional relationship. The disappointment in opposing counsel's voice when she called the next day punctured the young lawyer's inflated posturing, exposing the self-inflicted wound to his integrity.

The lawyer's penchant for error surged in his next case. Worried about the potential damage of unwelcome facts against his legal position, he answered the judge's question with a half-truth. His answer was "technically" and narrowly correct. It was ethical, strictly speaking. But the answer was also deficient. It avoided and distorted truth. Opposing counsel pointed out these deficiencies by kindly referring to the lawyer as having "inadvertently misspoken" on certain matters of fact. This was at once rhetorically generous of the older, more experienced opposing counsel and, in the same deft stroke, devastating to the younger one.

Although the young lawyer meant well in each case, his mistakes sprung from equal parts vanity, haste, and inattention. In each case, he slighted a vital member of the legal system – the client, the opposing counsel, and the judge. The lawyer more than slighted himself. His missteps laid bare the first wounds of professional failure prompting him to question his competence, to worry over his reputation, and to soak in his own well-deserved embarrassment.

The lawyer fretted daily; self-doubt had set in.

With little passage of time and even less thought, the lawyer forgot his mistakes. Or denied them to himself. Or misremembered or reinterpreted them. But he moved on. And that was his greatest mistake..

As with the young lawyer, forgetfulness on the heels of self-doubt can quickly become the habitual response to professional failure. To be sure, we all face the inevitable, formative letdown, the early career flop none who enter the legal profession can avoid. It happens to us all, yet we soon dim the memory of those mistakes, relegating them to dreamy insignificance, or we deny our failures, dismissing them as trivial or empty in the larger scheme of things.

If later forced to account for them, we reinterpret our mistakes as having worked out well after all, and we massage our history of screw-ups. We erase the cognitive dissonance our past faults triggered. In equally dismissive fashion, we might pay lip service to "learning from our mistakes" when in truth we forget the lessons, if indeed we ever learned anything other than to soothe our bruised egos.

In the reflexive grip of these habits, how can we learn from our mistakes? Fortunately for us the answer is emerging from decades of cognitive science research. Cognitive scientists now tell us the answer lies in somewhat counter-intuitive career advice: we should seek out ways to make mistakes. We should experiment with failure, they say. We should lose, lose often, and lose without great cost. In other words, we should invite mistakes we can survive, the kind from which we can recover, and then adapt. This last insight may be most crucial: it is our capacity to adapt to mistakes that determines whether we wilt or we flourish. In the end, our success always starts with our failure.

At least it did for me, in a series of early career blunders, a string of shameful gaffes I tried at first to deny, forget or reinterpret, only to realize much later their empowering lessons.

And while I make no claims to error-free legal practice today (far from it), I can affirm that whatever fulfillment I enjoy as a lawyer – two decades later – is largely the hard-won result of embracing my failures. In short, I've come to practice the art of losing. It is a subtle, searching art of self-discovery that ironically enough plumbs the depths of our mistakes as a necessary step towards wholeness and mastery in our difficult, challenging profession. The art of losing encourages us to make mistakes, survive them, and then adapt. We try again. We fail again. We fail better.

A Few Uncomfortable Truths About You and Me

Warming to the art of losing forces us to confront a few uncomfortable truths about our mental lives. Take, for example, how we instinctively excuse our past failures and see ourselves as more intelligent, more successful, and more skilled than we really are. This is known as the "self-serving bias," and it rules our mental roosts. We tell ourselves we are wonderful, which isn't entirely misguided since it avoids stagnation and lassitude. To obsess over our daily failures would shut us down with anxiety. Perhaps that is one reason evolution favored our ever-vigilant inner spin doctor.

Our inner spin doctor automatically slants our perceptions of the social world in our favor, leading us to believe poor outcomes are the result of other people's mistakes or factors outside our control. By the same token, when things turn out well we credit our legal genius to the exclusion of other causal factors. If we win our case, it was our brilliant tactical maneuvering. If the other side wins, it was their dumb luck. Such cognitive distortion prevents intellectual honesty and defeats our ability to learn from our wins and losses. As a consequence, the next case or client may suffer.

The self-serving bias stems from cognitive dissonance, the fact that our minds can't comfortably entertain two simultaneously opposed ideas. "I'm a well-qualified, capable attorney" clashes with "my mistake reveals my incompetence." The result: we instinctively refuse to accept the mistake that might imply our incompetence. Our minds do not naturally or easily separate our errors from our sense of self-worth. The latter, left to the automatic operations of the mind, almost always trumps the former. We rapidly jettison error to preserve ego. Once again the error goes unrecognized.

Cognitive dissonance is not the only enemy of error recognition. We also self destructively chase our losses. Known as the "sunk cost fallacy," such faulty thinking causes us to devote time and resources to undoing past mistakes. We hang onto losing cases and failing client relationships by concocting reasons to justify beliefs and behaviors in which we've made sizeable investments. But past investments should not necessarily influence future decisions. If we were truly rational, we would compute the odds of succeeding from each point forward and decide if more investment warrants the likely payoff.

It gets worse. To the extent we are rational, reasoning can take us to any conclusion we want to reach. Research now confirms that when we want to believe something, we subconsciously ask ourselves "Can I believe it?" But when we don't want to believe, we ask ourselves "Must I?" We answer yes to the first and no to the second. Applied to our mistake making, this kind of reflexive reasoning yields the self-justifying, face-saving answer we want, further complicating our own error detection. We're all obsessed with what others think of us, whether we know it or not. Our desire to fit in and our need for social approval motivate our reasoning to self-justifying ends. Those ends distort our ability to see our mistakes.

Yet another cognitive bias stifles our awareness of personal error – "hedonic editing." Otherwise known as "rose-colored glasses," this is the subtle process of persuading ourselves that mental intake doesn't matter. No matter the objective input from experience, we see only the positive subjective interpretation. This comes in many forms and is closely allied with the other biases we've surveyed. So, for example, peering through our rose-colored glasses, we might reinterpret past failure as a success. Or we might rationalize that failure wasn't that bad after all. Or, to our happy surprise, it actually worked out for the better! The upshot here is that we systematically reinterpret bad decisions as having actually benefited us.

Many other biases and cognitive flaws disrupt clear thought. Knowing about our self-serving mental machinery is only the beginning, a vital preliminary to the art of losing. After all, we must first recognize that we've made a mistake before we can do anything about it. Many of us fail at this nascent stage.

The simple nonjudgmental awareness that we "mindlessly" wash our errors in self-justifying reassurance can render us more alert to our capacity for error.

Practicing the Art of Losing

If I could talk to the flawed young lawyer from nearly twenty years ago, I would share what we now know about recognizing our failures, adapting to them, and learning from them.

First, we're not as smart as we think, but we can be much more mindful of our penchant for error. The mind is prone to all sorts of biases, distortions, and fuzzy thinking. No matter how rational you believe yourself to be, no matter how much you've mastered legal logic-chopping, no matter how high your grades, your IQ, your income, or the rung you've climbed on the status ladder in the legal profession, you remain all too human in your ability to perceive your own errors. Your emotional brain will almost always outpace your rational one.

Mindfulness entails "thinking about your thinking." Peer into the black box of your mind which modern cognitive science now allows. Mindfulness also means practicing nonjudgmental awareness of our emotional states, especially flash reactions to life's setbacks. It applies equally to our more ingrained, less visible, mental habits. Awareness requires equal parts detachment and commitment. Beyond that it simply requires becoming aware of thoughts as they race, sneak and scatter across the landscape of your mind. It is well worth the effort.

Mindfulness fortifies healthier attitudes about intelligence. We can commit ourselves to the growth mind-set, the practice of treating intelligence as an elastic, emergent bounty of capabilities that can grow and adapt. Regarding your own intelligence as flexible and capable of growth will change you. Effort and resilience spring from this change in attitude.

Finally, try new things in your law practice. Try them in contexts where failure is survivable which, most notably, means your client can't get hurt. We cannot turn clients' cases into laboratories to experiment with failure. We can, however, practice both mindfulness and the growth mindset responsibly to seek out ways to risk failure and adapt in our legal lives.

This is the art of losing. Be mindful of your mistakes. Grow your intelligence. Above all, adapt. Then flourish from your failures.

Mark Lewis, Kitrick Lewis & Harris

COLLECTING FEES ON THE GO

By Jocelyn Armstrong

Smartphones and tablets continue to impact the way lawyers do business. We have the ability to instantly access email and phone messages from clients. Accepting payment on the go is now an emerging trend. There are several mobile credit card readers on the market, with the three most popular being Square, Intuit GoPayment, and SwitchPay.

For a nominal percentage per swipe, attorneys can collect fees earned or consultation fees anywhere they meet clients. Two compelling benefits of mobile card readers are no monthly service fees and no monthly minimum requirements for transactions. This is important for solo and small law firms with low volume in credit payments. It eliminates the need for additional office equipment and dedicated phone lines.

The readers are small and easy to use. Receipts can be sent to clients via text or email. The attorney can also receive an electronic copy via email. Users are required to download a secure mobile application on their wireless devices to use the card reader. Lastly, the readers allow users to track their monthly activity via a secure website.

The Square card reader (www.squareup.com) boasts fast and secure transactions. The reader and affiliated website are compliant with PCI Data Security Standards. According to the security information provided on the Square website, encryption and firewalls are updated regularly. Square readers are available free by request on the website (allow three to seven business days for delivery) or can be purchased at retail locations like Staples, Walgreens, Target, or FedEx Kinko's. Square can be used with iPads, iPhones, and Android devices. The Square reader accepts Visa, Master Card, Discover Card, and American Express. Square offers two pricing options for the reader. Users can pay a $275 flat fee monthly in return for a 0% per swipe fee on transactions up to $400. Alternatively, users can pay 2.75% per swipe with no monthly payment or cap on the amount charged. A fee of 3.5% plus $0.15 is applied for manual entries. The processing fee is deducted from each payment. If the card reader is not used, the user is not charged. Funds collected via Square are deposited into the user's account in one to two business days.

Intuit GoPayment (www.gopayment.com) also offers a free card reader and no monthly minimum or set up fees. Intuit allows users to process Visa, MasterCard, Discover and American Express cards; however, rates differ for American Express. For a fee of $12.95 per month, users will save on per transaction costs. The processing costs under the flat rate plan are 1.7% for swiped transactions and 2.7% for manually entered credit card numbers. Users who select the "pay-as-you-go" option are assessed a 2.7% fee for swiped transactions and 3.7% for keyed entries. GoPayment is compatible with Apple devices running iOS 4.0 and higher. It is compatible with Android devices running OS 2.1 and higher. GoPayment transactions can be downloaded into QuickBooks to aid users in managing firm accounts. Funds collected with GoPayment are deposited within two to three business days. GoPayment allows for multiple users on one account. The primary user creates usernames and passwords for secondary users and invites them via an email to activate their account. GoPayment offers Triple DES (Data Encryption Standard) encryption. The card data is protected the instant the card is swiped and it is not stored on the phone. It is also Payment Card Industry Data Security Standard compliant.

SwitchPay (www.switchpay.com) is a device offered by Switch Commerce, a division of BMO Harris Bank. SwitchPay works with Apple, Android and Blackberry devices. Like GoPayment, SwitchPay allows one account to have multiple users and devices. Usernames and passwords can be assigned to help the main user track and limit account activity. This feature could be beneficial for small firms with several attorneys and one operating account. In addition to being PCI-DSS compliant and encrypted, SwitchPay also offers continuous fraud monitoring. SwitchPay offers a flat processing rate. Whether the card is swiped or the card number is keyed in manually, the rate is 2.75%. Lastly, SwitchPay offers a service called "Store & Forward." A user can accept payments even when there is not a cell signal. The transactions are stored as encrypted files and can be uploaded when a signal becomes available.

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Avoiding Ethical Problems in the Cloud

Lawyers who select the default settings for these services might unknowingly be sending privileged client communications over the Internet into the cloud. Some state bar associations are beginning to respond to the ethical questions surrounding these services.

By Bradley W. Stoll

As attorneys turn more and more to smart phones and tablets for their work, cloud computing services and online backup are becoming increasingly prevalent in the legal community. Email communications among attorneys and their clients is now expected, and attorney teams regularly share documents over Dropbox and save case notes in Evernote. It's not just attorneys on the cutting edge of technology using these services – anyone who uses an Apple device has access to free online backup of their data through the iCloud service.

Lawyers who select the default settings for these services might unknowingly be sending privileged client communications over the Internet into the cloud. Some state bar associations are beginning to respond to the ethical questions surrounding these services. Their opinions provide valuable guidance to lawyers in all states.

The Massachusetts Bar Association recently issued an opinion approving the use of "Internet based storage solutions" for storing and synchronizing documents containing confidential client information "so long as the lawyer undertakes reasonable efforts to ensure that the provider's terms of use and data privacy policies, practices and procedures are compatible with the lawyer's professional obligations." Ethics Opinion No. 12-03 available at www.massbar.org/publications/ethics-opinions/2010-2019/2012/opinion-12-03. These reasonable efforts include:

a) examining the provider's terms of use and written policies and procedures with respect to data privacy and the handling of confidential information;

(b) ensuring that the provider's terms of use and written policies and procedures prohibit unauthorized access to data stored on the provider's system, including access by the provider itself for any purpose other than conveying or displaying the data to authorized users;

(c) ensuring that the provider's terms of use and written policies and procedures, as well as its functional capabilities, give the lawyer reasonable access to, and control over, the data stored on the provider's system in the event that the lawyer's relationship with the provider is interrupted for any reason (e.g., if the storage provider ceases operations or shuts off the lawyer's account, either temporarily or permanently);

(d) examining the provider's existing practices (including data encryption, password protection, and system backups) and available service history (including reports of known security breaches or "holes") to reasonably ensure that data stored on the provider's system actually will remain confidential, and will not be intentionally or inadvertently disclosed or lost; and

(e) periodically revisiting and reexamining the provider's policies, practices and procedures to ensure that they remain compatible with the lawyer's professional obligations to protect confidential client information reflected in Rule 1.6(a).

The Pennsylvania Bar Association Committee on Legal Ethics and Professional Responsibility also recently issued a similarly detailed opinion about lawyer use of cloud computing:

An attorney may ethically allow client confidential material to be stored in "the cloud" provided the attorney takes reasonable care to assure that (1) all such materials remain confidential, and (2) reasonable safeguards are employed to ensure that the data is protected from breaches, data loss and other risks. Formal Opinion No. 2011-200, available at http://bit.ly/QyFZzo.

Continued on page 42

Continued from page 41

While not as detailed as the Massachusetts guidance, the Pennsylvania opinion does set forth a similar duty of care for attorneys using cloud computing services. Specifically, the opinion requires Pennsylvania lawyers to ensure that a cloud computing service provider:

- explicitly agrees that it has no ownership or security interest in the data;
- has an enforceable obligation to preserve security;
- will notify the lawyer if requested to produce data to a third party, and provide the lawyer with the ability to respond to the request before the provider produces the requested information;
- has technology built to withstand a reasonably foreseeable attempt to infiltrate data, including penetration testing;
- includes in its "Terms of Service" or "Service Level Agreement" an agreement about how confidential client information will be handled;
- provides the firm with right to audit the provider's security procedures and to obtain copies of any security audits performed;
- will host the firm's data only within a specified geographic area. If by agreement, the data are hosted outside of the United States, the law firm must determine that the hosting jurisdiction has privacy laws, data security laws, and protections against unlawful search and seizure that are as rigorous as those of the United States and Pennsylvania;
- provides a method of retrieving data if the lawyer terminates use of the [cloud] product, the [cloud computing] vendor goes out of business, or the service otherwise has a break in continuity; and,
- provides the ability for the law firm to get data "off" of the vendor's or third party data hosting company's servers for the firm's own use or in-house backup offline.

These new duties of care mean that lawyers cannot simply assume that their online service will protect confidential information. Lawyers must take the time to investigate the terms and conditions for these online services (the multi-page windows most of us simply click through without reading when signing up for a new service) before storing privileged material to ensure that companies aren't reserving the right to disclose stored information at their own discretion. Failing to carefully read these lengthy documents can be dangerous.

For instance, Apple's "iCloud Terms and Conditions" give Apple the right to "access, use, preserve and/or disclose your Account information and Content to law enforcement authorities, government officials, and/or a third party, as Apple believes is reasonably necessary or appropriate" (available at www.apple.com/legal/icloud/en/terms.html). This broad grant of disclosure authority should prompt lawyers to carefully monitor what data is backed up to Apple's service and, if necessary, avoid using Apple's services for client communications and materials, unless those offending terms can be changed.

"Reasonable efforts" also means that lawyers must pay attention when popular online storage systems announce possible security breaches, like the one suffered by online storage system Dropbox just a few months ago. "Dropbox investigating possible security breach", July 18, 2012, cnn.com (available at www.cnn.com/2012/07/18/tech/web/dropbox-spam-security/index.html). Although this security breach only involved a leak of Dropbox user accounts, and not any unauthorized access to Dropbox materials, it still demonstrates a possible security flaw in the system. Lawyers must determine whether these sorts of security breaches mean that the services are too untrustworthy for lawyers to use them and still meet their ethical duties.

Ohio lawyers should heed the advice of the Massachusetts and Pennsylvania Bar Associations (and other opinions that will undoubtedly be forthcoming) to ensure their use of the Internet in their own practice does not result in ethical violations. A careful examination of the terms and conditions of these online services and an open ear to news of security breaches will help lawyers choose their cloud computing providers wisely and avoid unintentionally disclosing confidential privileged information.

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Giving Back Responsibly

By Andrew C. Clark

Every day the legal profession calls upon each of us to make a positive impact within the various aspects of our lives. We strive to obtain the best results for our clients; to exceed the expectations of our partners/supervisors; to optimize our family time; and ideally to improve our community. With all of the conflicting time and energy demands that face our profession, it is crucial to select service opportunities that will keep your interest and allow you to make an impact that justifies the time commitment. "Service opportunities" include any endeavors that exceed your normal job duties and can range from additional duties within your firm/office to starting a charity to address societal issues.

When considering a new service opportunity, it is important to evaluate the following four primary factors to increase the likelihood of a positive impact for everyone involved – personal interest, time commitment, other obligations, and opportunity cost.

Personal Interest

We all have organizations or causes that speak to us as individuals. From contributing to the prestige of an alma mater to serving on the board of a charity or even spearheading a new project at the office, it is crucial to select projects that capture your interest and fit within your personal beliefs and/or professional goals. This component is perhaps the most crucial element because a reduced interest level will result in reduced personal satisfaction, an increased potential for mediocre contributions, and ultimately an increased risk of a negative impact on your reputation.

Time Commitment

When evaluating a service opportunity, conduct your own due diligence and determine what the anticipated time commitments will be. Discuss the time commitments with your family, your employer, and the group/organization that you intend work with. Similar to setting client expectations, it is your responsibility to ensure that everyone involved is aware of the time that you are willing to commit to a project and you should strive to maintain discipline in meeting your obligations. Failing to satisfy your time commitment(s) can damage relationships and your reputation so remember that even the most worthy cause will occasionally need to be declined or restructured due to scheduling constraints.

Other Obligations

This component presents the largest unknown quantity and requires due diligence on the front end. Depending on the service opportunity, you could be asked to provide financial contributions or to provide access to your network of contacts for fundraising or advertising. While these types of obligations may not be objectionable on their face, and may even be welcome, they can create financial and/or social issues if these expectations are not clarified in advance.

Opportunity Cost

As attorneys we are often tempted to believe that we can do it all. We gladly accept additional assignments at the office; we volunteer for family and friend issues; and we are presented with myriad service opportunities that may impact our ability to say "yes" to other opportunities. As our schedule fills up it is increasingly important to engage in activities that are cost effective in terms of dollars (earned, spent, or foregone), personal/family time (sacrificed or preserved), and potential impact. The first step in this evaluation is to determine a clear hierarchy of personal and professional priorities that can serve as guideposts to assist you in determining whether you have additional capacity and how you can maximize your time and contributions.

Participation in service opportunities should be viewed as an active and calculated component of your personal/professional development plan. As attorneys we are uniquely capable of facilitating change in our communities. I encourage you to set measurable service goals and to seek opportunities that will not only conform to your interests, availability, resources, and skill set(s) but will also challenge you to become a better attorney and better member of society.

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Hate Speech –
To Rule or Not to Rule

By Janyce C. Katz

Jeremy Waldrom in The Harm in Hate Speech (2012, Harvard University Press) asks the question, should a "just, well-ordered society" allow the regulation of hate speech.

The answer of NYU Law professor Waldron, an Oxford University Ph.D. with an LL.B from the University of Otago, New Zealand is that to the extent it protects a minority group's dignity and equal standing in society, yes.

Waldron argues articulately that certain "fundamental assaults on the ordinary dignity of the members of religious minorities" result in lowering the dignity of that group relative to other groups and disrupting society.

In a well-ordered society, he writes, people should be able to rely on the protection of the law to allow them to maintain their dignity. He challenges the accepted definition of protected speech that includes almost all speech, no matter how disgusting or derogatory to a group of individuals, unless it specifically advocates a specific harm.

While his argument about the need to limit certain types of speech is well-written and persuasive, it raises many questions he does not answer. For example, preserving "dignity" is critical to his argument.

Much as Waldron tries to define "dignity" as "inherent in the human person," the definition isn't clear. Where one draws the line between satire that is offensive or words that should be tolerated, and a frontal attack on a group's dignity is also not clear. He believes it possible to distinguish the one from the other. This is the danger of speech limitation – where the line should be and who should draw it.

Certainly, the speech principle as enshrined in the First Amendment is a treasure, unique and special in history. The ability to speak freely, write and express thoughts is essential to a democratic system.

Anthony Lewis, in Freedom for the Thought that We Hate, A Biography of the First Amendment, (MJF Books, 2007), reminds us that the interpretation of the First Amendment at the time of John Adams permitted punishment for what was called criminal libel, such as the seditious libel law imprisoning editors of newspapers for mocking the President. Subverting the government by inciting rebellion among slaves was also considered criminal libel. And, in 1823, someone published an article in a Massachusetts journal denying the existence of God, a blasphemous libel resulting in a jail sentence. Even in the U.S., during World War I, thousands of people including Eugene Debs, a candidate for U.S. President, were imprisoned under the "clear and present danger" standard when they protested aspects of the war.

The First Amendment was designed to protect "pure" political speech. The interpretation of "protected speech" has broadened far beyond the original protection that allowed legislators to debate issues on the floor of Congress without fear of arrest.

Now, the interpretation of what is protected speech includes people dancing wearing only pasties on select parts of the anatomy and people who burn U.S. flags as an anti-war statement, protests against Wall Street by living in a park and more. Even videos, in which dogs tear each other to pieces in fights or are otherwise tortured may be a despicable form of protected speech that animal protection laws cannot quash. See, e.g., *United States v. Stevens,* 1305 S. Ct. 1577 (2010).

Content based regulation of speech specifically implicates an area of speech guarded by the First Amendment. To restrict the speech content even somewhat is highly problematic. As the Supreme Court pointed out in *United States v. Playboy Entertainment Group,* Inc. 529 U.S. 803, 812, (2000), "[t]he distinction between laws burdening and laws banning speech is but a matter of degree..." Even so, some categories of speech still fall outside of the bounds of constitutional protection; for example, fighting words, child pornography and screaming fire in a crowded theatre when there is no fire.

Where does hate speech/ group defamation fall in the spectrum? Waldron points out that hate speech is banned in most of Europe. He also notes that the European concept of protected speech is more restricted in general than in the U.S. But, he maintains, a shocking attack on one's views can be distinguished from an attack on the dignity of the group, inherently an attack on the right of the individual to feel himself or herself an equal in society.

At one time, the Court decided against group libel. Justice Felix Frankfurter, writing for the majority in *Beuharnais v. Illinois*, 343 U.S. 250 (1952) upheld a law prohibiting the publication or exhibition of any writing or picture portraying the "depravity, criminality, unchastity, or lack of virtue of a class of citizens of any race, color, creed or religion."

Yet, when Nazis threatened to march in Skokie, in an attempt to intimidate the survivors of Hitler's policies and to encourage other anti-Semites to act, the Supreme Court upheld the Illinois Supreme Court's overturning a stay of the march, thereby saying the Nazi action was protected speech. National *Socialist Party v. Village of Skokie,* 432 U.S. 43 (1977).

Legal scholars disagree about whether Beuharnais has been explicitly overturned. Many argue that *New York Times v. Sullivan,* 396 U.S. 254 (1964), in which the Court developed an "actual malice" standard to apply when a public figure sues for libel, implicitly overthrew Beuharnais' five to four decision upholding an application of a criminal libel statute against a racist pamphlet.

However, as Waldron points out, even protected speech words can stir up hatred. Pour a few hundred million into advertising depicting a group of people as despicable, lower than rats, pound that message over and over until it becomes part of the world view. Then up the racket, and, voilà, group discrimination. It has happened before. Uganda is a recent, horrible example.

A two-part 2003 Canadian miniseries titled "Hitler: The Rise of Evil" illustrates the power of hate speech to influence the dissatisfied to hate those different from themselves. If made under the protection of the current interpretation of the First Amendment, the speech of a Hitler, describing what he believed caused the crippling of Germany would have been protected speech up and until he urged his minions to go destroy the members of the offensive groups and their homes and houses of worship.

Hitler's dramatic screeching and blaming of a religious or a mentally ill group did not radically differ from the cries of the Ku Klux Klan members as they circled around a burning cross in Southern Ohio, chanting against certain religious and minority groups, utterings the Supreme Court found to be protected speech under *Brandenburg v. Ohio,* 395 U.S. 444 (1969). In Brandenburg, the Court ruled that only when those who hear the speech are urged specifically to act against a target – to burn out or kill – should that action/speech be controlled.

In *Brandenburg,* "fear that speech might persuade provides no lawful basis for quieting it." Id. at 447. The cost of freedom is enduring speech that we don't like. *Evznoznik v. Jacksonville* 422 U.S. 205 (1975).

The late C. Edwin Baker, professor of law and communication at the University of Pennsylvania would protect the speech of a hatemonger that is, until, like the Court suggested in *Brandenburg,* the audience starts harmful action because of the speech. Such utterings, as ugly and hurtful as they might be, Baker argued, should be protected because they express the essence of the speaker.

The marketplace of ideas is another theory first advanced by Justice Holmes as a means of controlling distasteful thoughts. Just as the economic market should be free from constraint, so too, allowing words to compete with other words ensures the best idea will win out.

However, speech is not quite an economic market. Even a great product can be pushed out of the market by a mediocre one that has a huge budget "branding." The cost of freedom may be too much for some to endure.

The bullied child may feel so excluded s/he commits suicide or grabs a gun and goes to mow down those who caused pain or those who resemble the pain causers but are unknown. So, too, the minority group excluded from society is silenced or quieted, not shaping the alleged "market place of ideas" because of fear of repercussions or perhaps the group rises up to reverse its degraded status. Neither, according to Waldron, would be good for society.

To place a gag on Hitler or on the Ku Klux Klan to keep them from repeating over and over that certain peoples should be excluded from humanity raises a problem. But, as Waldron points out, to not limit the speech creates another problem. "Each person . . . should be able to go about his or her business, with the assurance that there will be no need to face hostility, violence, discrimination or exclusion by others."

Sullivan, Brandenburg, and the cases that follow were a reaction to a limitation of speech that allowed for the persecution of individuals who might have uttered support for unpopular doctrines like communism. Now we follow a speech standard that allows words unless they constitute a clear and present danger to a specific individual or group – but allows harsh words up until that point.

Removing dignity from people is not how we, who believe ourselves enlightened, act, or so we think. But, how far in time are we from the lynch mobs that hauled the unfortunates out of their homes and tortured and hanged them for saying the wrong thing; or castrated men for being Jehovah's witnesses who didn't recite the pledge of allegiance?

Waldron's book is a response to the ideas of C. Edwin Baker, Ronald Dworkin, Antony Lewis and others who believe speech can be limitless without harm. (Many of us know from childhood and other experiences that words, as well as sticks and stones, can destroy.)

Waldron cannot see the Court finding constitutional a limitation of speech to preserve the dignity of minorities. While his idealistic wish for a better society is heart-warming, he does not clearly state how hate speech could be pruned safely from other protected speech to preserve freedom of speech. Maybe, in his next book he will come up with solutions – how to have freedom of expression in a well-ordered society without harm to the dignity of minorities.

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Lawyers With Artistic License

(Fourth in a Series)

By Heather G. Sowald

THE KLATT BROTHERS' BAND

In 1995, attorneys Bill Klatt, Peter Pavarini, Joe LaFleur, Bob Robenalt, and Doug Morgan, who all played musical instruments, began getting together regularly for evenings of music, fun, and friendship. They enjoyed these evenings so much they decided to form a band, and no one now recalls how or why it happened – they named it The Klatt Brothers' Band.

Last year, attorney Douglas Morgan left the band and was replaced with a new vocalist, Betsy Borchers, one of three non-attorneys who are now part of the group. Reportedly, the non-lawyers keep the lawyers from arguing too much!

They still make the time to gather weekly to practice, and while they are at it, generally share a glass of wine or beer and talk about family, sports, and current events. Fellowship is really what, they say, has kept them together all of these years, coupled with a shared love of music.

They describe the music their band plays as Americana because they don't limit themselves to just one style. They play whatever they like, including rock 'n roll, bluegrass, country, gospel, and original songs. The band performs at charitable and fundraising events.

Judge William A. Klatt – Bill grew up in Dayton, Ohio. (He was inducted into the Alter High School Hall of fame!) His favorite toy as a child, he says, was his record player. He had a large collection of both 78 and 45 records that he constantly played, to his parents' great annoyance, he recalls. While his father, a real estate broker, enjoyed listening to music, his mother was the lead singer in a local big band in the late 1940s, that he believes was a strong influence on him. He is a self-taught musician, learning to play guitar in college at Miami University, and subsequently he learned to play piano, banjo, and accordion. While he is essentially self-taught, Bill points to there being a lot of very good instructional materials available for those with the desire to learn.

Bill earned his law degree from the University of Notre Dame (1981), beginning his legal career at Squire Sanders, becoming a litigation partner, and then serving as First Assistant Ohio Attorney General. In this position, he had the opportunity to argue a case before the U.S. Supreme Court. He left there to become chief legal counsel to Governor Taft. In March, 2002, he was appointed as an appellate court judge for the 10th district in Columbus, where he has been serving ever since. He finds his judicial work, he says, to be both enjoyable and rewarding.

Bill and his wife, Dr. Maryanna Danis Klatt, an associate professor in the school of allied medicine at O.S.U, have three adult children. Along with his family responsibilities, he has also found time to be active in both the legal and local communities. He has served as president of the Godman Guild Association, as a board member for the Ohio Legal Assistance Foundation, and on the board of the Arts and College Preparatory Academy.

Bill did not play in a band until he and fellow lawyers – Peter, Joe, Bob and Doug -- began getting together to play just for fun. Before they knew it, a band was born. Bill sings, and plays the keyboard, banjo, and acoustic guitar in the band. He practices on his own a lot. He says that playing and practicing music are his principle forms of relaxation – along with exercise. He also spends time writing and composing songs.

Bill, when asked for a quote, modestly quips, "No one has had more fun playing music, despite a shallow well of talent!"

Joseph F. LaFleur

Shortly after completing this article, I learned that Joe LaFleur recently passed away unexpectedly. His band mates encouraged me to publish my original article as a tribute to him. Joe, they told me, "was a great lawyer and a wonderful person. He loved playing music. We, his friends and band mates, loved him and will miss him immensely".

Joe grew up in Fairfax, Ohio, a village on the east side of Cincinnati. He was a self-taught drummer as a child, learning by playing at a friend's house on the friend's drum kit. As a result, his drum-beating didn't get on his own parents' nerves! In fact, Joe didn't own his own set of drums until he bought a used set when he was 30 years old, and played ever since.

Joe attended Ohio University, receiving a B.A. in Business Administration, and while attending the University of Cincinnati Law School, he taught himself how to play the harmonica. Joe and his wife, Kathy, formerly a speech pathologist, live in Hilliard and have two sons, Jake (20) and Philip (18).

After receiving his law license in 1986, Joe joined Schottenstein Zox and Dunn, later leaving to serve as in-house counsel with American Electric Power. He left there to go in-house with Honda of America Mfg., Inc. Legal Department, in 1996, where his practice was focused primarily on commercial, corporate, environmental, and real estate issues. He served as the manager of their Commercial/Regulatory unit. Joe said that he balanced his work life, with spending time with his family, reading, bicycling, and involvement in community service and music.

In the community, Joe was president of the St. Charles Prep athletic booster club. His musical pastime occurred both as a band member (percussionist, harmonica player, and drummer) of The Klatt Brothers Band, and as a band member of the Navigators. This latter band plays 60s, 70s, and 80s hits and is composed of business/professionals in the community. In that band, he said, he performed vocals, too, with Johnny Cash being his specialty!

Joe's musical goal was, he told me, to play as often as he could.

Peter A. Pavarini grew up in a singing, musical family on Long Island, N.Y. His father was a big band musician (trumpet and saxophone) who played with various bands, including the USO bands in Korea. His grandfather was a Greenwich Village guitarist and mandolin player. Peter first learned to play guitar at the age of 5. He later played trumpet in his high school marching band. Peter initially played folk music, turning to rock 'n roll in middle school, and later playing in a band in high school named "The Night Riders." He performed throughout college at SUNY Albany and while attending Boston College Law School, playing small clubs, parties, and school events just for the sheer enjoyment of it.

Peter graduated from law school in 1977, he notes, along with classmate, Secretary of State John Kerry. His first position

Continued on page 48

Aesthetics

Continued from page 47

as an attorney was with the U.S. Department of Health & Human Services during the Carter years. During at time, he met his future wife, Colleen, through their involvement in a Georgetown community theater.

After they married, they moved to Columbus in 1981 for Peter's new job with Murphey, Young & Smith, which later merged with Squire Sanders. Colleen and he have two sons, now ages 23 and 27, who are also musically inclined. Peter is active with his church and many charities, including Three Strands, which is developing a hospital in the Central African Republic. About six years ago, he and his wife founded the Grace Clinic of Delaware County, which is a free medical ministry. He is the president-elect of the American Health Lawyers Association, a 12,000 member legal society focused on health reform and other major issues. Additionally, he has also taught courses at O.S.U. and at Capital Law School.

Peter says that he almost gave up music when he started practicing law, but rediscovered his passion for entertaining at around age 40 when he started getting together with his friends with whom he who subsequently formed the Klatt Brothers Band. "The next best thing to physical intimacy is singing in harmony with your friends," he relates. He plays the bass, acoustic guitar, and the harmonica with his band, and he also composes some of their musical pieces.

Of course there is only so much time, but, to him, "there is never enough time to do the things you love, but you can't wait. Having an outlet like the performing arts is a tremendous stress-reliever. Being non-professional makes it easier to do it for pure pleasure and to do something good for the community. I still find it more relaxing to strum my guitar after a 16-hour work day than to watch TV or some of the other things people do." Peter also relaxes by spending time oil painting, gardening, and engaging in outdoor sports like hiking, kayaking and bicycling. Sometimes when he is not performing with his band members, he performs for his church, the AHLA, and other organizations.

Peter hopes that since the Rolling Stones are still touring at age 70, their own band will be performing at least as long! He believes that retirement is not an option for people who love making music.

If you would like to hear a sample of their music or to learn more about their band, just Google "Klatt Brothers Band." They have a CD called "Radio Hour," recorded about six years ago, copies still available upon request.

As always, please let me know if you, or an attorney you know, is artistic, creative, musical, etc., for inclusion in future articles in this series. Don't be shy!

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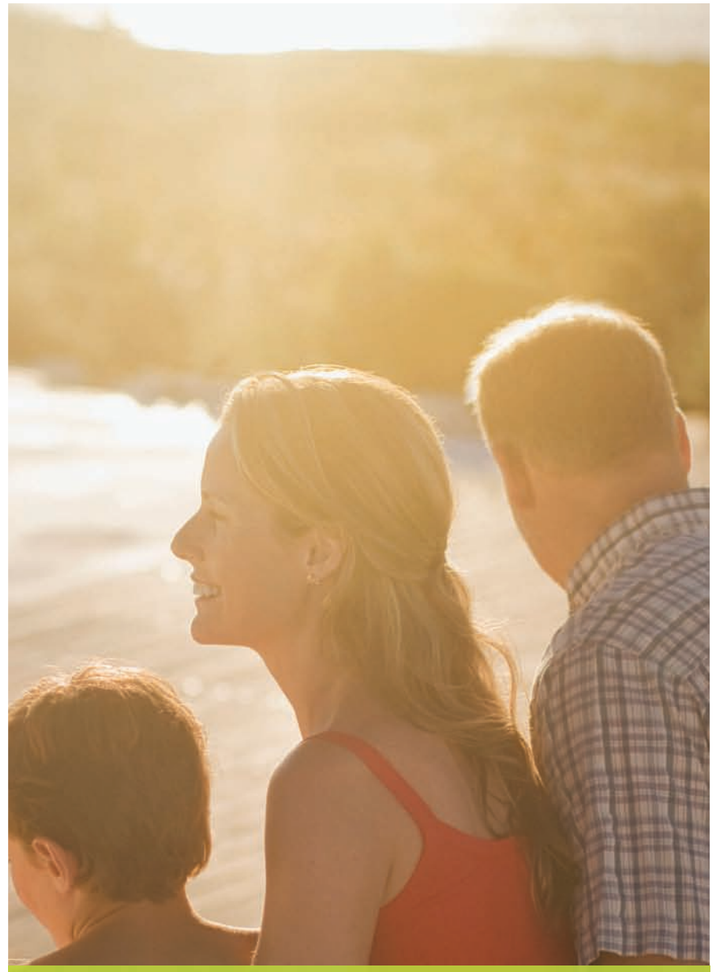

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