Columbus Bar
Spring 2016

LAWYERS QUARTERLY

Special Issue:

Children and the Law

Greif Fellow Victoria Bader details her lessons from working with victims of trafficking. Michael Corey discusses his personal connection to the unique challenges facing Appalachia's children. Sandra Mendel Furman interviews two central Ohio mediators on children's inclusion in domestic relations cases. Alphonse Gerhardstein and Kimberly Tandy outline changes to the Ohio Department of Youth Services stemming from *S.H. v. Stickrath*.

A supplement to The Daily Reporter

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President's Page

All You Can Take With You Is That Which You've Given Away

By Jay E. Michael

As this article goes to print, I will be entering my last quarter as president of the Columbus Bar Association. It has been my privilege to share my time, effort and expertise with our members. I have a new appreciation for the board members, the individuals working at the Columbus Bar and the volunteers who put so much into committees, event planning, continuing legal education, networking and other benefits for our members. It has been fascinating to witness the hard work and preparation that goes on behind the scenes to provide services and benefits to our members.

I believe that I was destined to become a lawyer, and I know many of you feel the same about your own career choices. My year as president of the Columbus Bar has given me the opportunity to give back to the legal community, of which I'm privileged to be a member. Of course it has meant some sacrifices in the time spent on my practice and with my family, but I have so much to take away from this rewarding experience. It has been a wonderful and eventful year so far.

"Be yourself … all the others are taken," is a phrase I love, and it can be applied to my time as president. When I am in a board meeting, it is interesting to hear each member's perspective based on his or her optics. Depending on the background of the individual, such as big firm, solo practitioner, government employee or the judiciary, the varying viewpoints make for spirited discussions and even heated debate. Being a solo practitioner, I'm chief cook and bottle washer in my practice, and I think this has helped me relate to the many different aspects of the Columbus Bar's day-to-day operations.

Serving on the board, I have made connections with lawyers and others I might not have otherwise met. Most recently, I attended the Bar Leadership Institute in Chicago, where I rubbed elbows with bar leaders from across the country. I joined my fellow board members to spend an afternoon making lunch for families staying at the Ronald McDonald House. I have attended conferences, seminars and social functions where I have met people with amazing stories to tell. My service to the Columbus Bar has been a lot of fun as well as a true learning experience, and I encourage all of our members to take advantage of the many opportunities afforded by the association to connect with others and grow in the profession.

I would ask all of you, as members of the Columbus Bar Association, to challenge yourself to commit some time to this great organization. Lawyers, by virtue of our skills, experience and education, have a unique perspective on life and our profession. The participation and input of our members is a valuable and necessary part of an active and engaged professional association. Share your knowledge and expertise with the bar by joining a committee, engaging in volunteer opportunities or attending social functions; in turn, it strengthens the legal community, and I promise that you will take so much from the experience with you.

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Law Students Depose Doctors:

Capital University Law School's New Depositions Course Pairs Law Students With Medical Residents From Grant Hospital

By Zachary B. Pyers, Kevin P. Foley, Rachel M. Janutis and Sarah L. Sams

Legal education naturally lends itself towards an interdisciplinary approach, combining law with another academic discipline. Lawyers in practice are seldom called on to simply know or understand the law. Rather, they must apply it in the context of specific facts and circumstances and action on their part. Whether they are a patent attorney with engineering issues, a business transactions attorney with corporate client needs or a medical malpractice attorney with medicine, attorneys must also master critical non-legal disciplines to excel.[1]

It is no surprise that there has been a rise of interdisciplinary education within law schools. Law schools introduce other disciplines to help prepare students for practice. For years, many schools have offered joint degree programs, such as joint J.D./M.B.A. degrees, as well as courses studying the intersection of law and fields such as economics, philosophy and history.[2]

Likewise, in recent years, law schools have attempted to broaden their curricula to increase opportunities for professional skills training and professional ethics and values formation to help ensure that graduates are "practice ready."[3] Law schools have continued to grow their skills-based course offerings. This effort has been triggered by several factors. Influential organizations such as the Carnegie Foundation and the Clinical Legal Education Association have issued reports calling for change in legal education.[4] In March 2014, the American Bar Association's Council of the Section on Legal Education and Admission to the Bar adopted revised Standard 303 which mandates that, effective beginning in academic year 2016-2017, all accredited law schools require six credit hours of experiential learning as a requirement of graduation.[5] Additionally, structural changes in the market for legal services have resulted in more students entering small to medium law firms and solo practice.[6]

Extending its skills-based course offerings, Capital University Law School recently introduced an innovative course in depositions. While this is not entirely novel, Capital's course is unique because it seeks to utilize an interdisciplinary approach to skills training and professional development.

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OHIO'S FIGHT TO COMBAT HUMAN TRAFFICKING

By Mike DeWine

Human trafficking is a complex crime with a truly horrific human cost. But it's one that can and should be confronted. Ohio's recent history in combatting human trafficking shows just how much progress we can make together. In 2011, Ohio was one of only 12 states with no human trafficking legislation on the books.[1] Today, the Polaris Project – a national non-profit organization that works to end trafficking – has referred to Ohio as a model state for the work that we have done on state and local levels to educate Ohioans on the issue of trafficking and to rescue and restore those victimized by traffickers.

Ohio has made steady progress in strengthening its human trafficking laws to match the standards found in federal law. In 2014, Ohio House Bill 130, the End Demand Act, was passed. This legislation targeted the purchasers of sex with minors in Ohio. Research has shown that the majority of men and women working in the sex trade as adults first started as minors whose vulnerabilities were taken advantage of either by a stranger acting as their boyfriend or girlfriend or even by one of their own family members.[2] Before the passing of the End Demand Act, an individual who purchased sex with a minor was able to defend their actions by claiming they were unaware that the child was, in fact, a child, allowing traffickers to lie about their victims' age in online advertisements for sex. This law removed the mistake-of-age defense and also required that individuals who purchase sex with a minor must register as a sex offender.[3] This law also makes it easier for juvenile courts to terminate parental rights when parents traffic their children.[4]

Ohio has created presumptions that protect children from "consenting" to being trafficked. House Bill 130 also mandated that any child 15 years old or younger who is arrested for prostitution-related charges is automatically considered a victim of human trafficking.[5] Federal law already includes a provision that considers any minor under the age of 18 to be a victim of human trafficking if they are engaging in commercial sex. In Ohio, because the age of consent is 16 years old and not 18, the law was negotiated to match that standard. However, if an individual is 16 or 17 years old[6], the bill states that compulsion does not need to be proved if the minor was being trafficked by a person of authority, such as a teacher, coach or parent. This change in the law gets us closer to the federal definition of trafficking and only works to strengthen our ability to prosecute those who would take advantage of Ohio's vulnerable youth.

Ohio is also bringing data collection and analysis to the effort. Local law enforcement agencies are required to report cases of potential human trafficking investigations and convictions to the Ohio Law Enforcement Gateway.[7] This data collection tool through OHLEG allows the state to take a closer look at the number of cases being identified by law enforcement and who they are encountering on these cases. These numbers are published every year in the Ohio Attorney General's Human Trafficking Commission Annual Report. In 2015, local law enforcement identified 102 potential cases of human trafficking. They also recovered 203 victims of trafficking and identified 130 offenders and 192 consumers.[8] These numbers have greatly increased since reporting was first required in 2013, when officers reported 30 cases of trafficking in the entire state.

Education is a key component in the fight against human trafficking. That is why, as of 2013, every new peace officer in Ohio must take a 12-hour course on human trafficking as a part of their basic training. In 2015, 1,492 officers completed the human trafficking awareness course through the Ohio Peace Officer Training Academy basic training program. On top of that, another 2,615 current peace officers completed the advanced human trafficking awareness course available through the online OPOTA site and 39 completed an advanced course in person.[9] To ensure that all officers are up to date on the latest data and information on human trafficking, I announced last year that all current peace officers will be required to take an online course on human trafficking awareness as a part of their required continuing education credits for 2016. As law enforcement continues to better learn the signs of human trafficking, we can expect to see more cases coming forward and more victims being identified.

We have seen an increase in awareness and work being done by law enforcement, enactment of improved legislation and growing networks of local, grassroots organizations. Ohio is fighting back against human trafficking, but there is still more work to be done. This year, my office provided funding to the Case Western University School of Law to open a law clinic specifically focusing on students working with victims of human trafficking. My office also collaborated with Advocating Opportunity to produce a CLE program for the Columbus Bar Association focused on educating lawyers on current legislation and trends in both sex and labor trafficking. Trafficking is something that often takes place in the dark, behind closed doors and away from where people can see. As we continue to educate Ohioans on this issue and provide services to victims, these traffickers will soon have very few places to hide.

1. Ohio Att'y Gen. Office. 2013 Human Trafficking Commission Annual Report 3 (2013).
2. Ohio Att'y Gen. Office. 2012 Domestic Sex Trafficking Report (2012).
3. R.C. §2907.24(A)(3)(a).
4. R.C. §2151.414.
5. R.C. §2905.32 (A)(2).
6. R.C. §2905.32 (A)(3).
7. R.C. §109.66.
8. Ohio Att'y. Gen. Office. 2015 Human Trafficking Commission Annual Report 6, 7 (2015).
9. Ohio Att'y. Gen. Office. 2015 Human Trafficking Commission Annual Report 9 (2015).

Attorney General Mike DeWine
Ohio Attorney General's Office

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At the invitation of the Family Medical Residency Program at Ohio Health's Grant Hospital in Columbus, one of Capital University Law School's downtown neighbors, Capital launched an interdisciplinary deposition course aimed at providing cross-training to medical residents and law students. The process is designed as an academic exercise not only for the law students but also for the residents. It is described as a course that:

"… provides students with a developed knowledge and understanding of deposition strategies, as well as with the opportunity for hands-on application of the substantive and procedural law surrounding lay and expert depositions. Each student will be required to take and defend a lay and an expert deposition, prepare a deposition outline for those depositions they take and prepare a deposition summary for all their deposition simulations. In conjunction with Grant Hospital's Medical Program, the final videotaped class will consist of taking and defending expert depositions, employing Grant Medical Residents as deponents and expert witnesses."

Depositions Course Structure

In Capital's deposition course, students learn the fundamentals of taking and defending depositions. In law school, many students may not have even seen a deposition transcript, let alone witnessed a deposition. The course is designed to introduce the law students to the process: identifying deponents, preparing deposition outlines, identifying goals of depositions, questioning tactics and strategies, defending the deposition, the difference between lay and expert witness depositions and other common deposition issues. It also provides practical experience through numerous mock depositions. As in traditional law school skills courses and practicum, the students generally play the role of the attorney taking the deposition, the attorney defending the deposition and the witness. This process helps to get the law students comfortable with asking deposition questions and defending depositions.

The final exam is what distinguishes this course from other law school skills courses. The final exam requires students to take and defend a medical expert's deposition in a mock medical malpractice case. The residents from Grant Hospital Family Medicince Residency Program play the role of both the defendant doctor in the medical malpractice action, as well as the plaintiff's expert witness. The law students are required to meet with their witnesses prior to the exam, prepare them for the deposition process and anticipate the deposition questions. Then, after the students have had the opportunity to prepare their witnesses, they take and defend a deposition. Immediately following the final exam exercise, individual feedback is provided both to the law school students and to the residents on the exercise.

Following the individual feedback sessions, the entire class of law students and residents gather to further discuss the exercise and the deposition process. By meeting collectively, the law students are better able to understand the perspective of the resident as the deponent, and the residents are better able to understand the perspectives of the law students as the lawyers.

Benefits to the Students

The greatest benefit to law students is a simulated experience that more accurately mirrors a live-client experience than most traditional law school skills courses and practicum. Above all, the law students depose real expert witnesses. Although the final exam is based on a mock case file, the medical issues are real. The case file from which the students work provides a richer experience because it has been jointly developed by lawyers and physicians to ensure authenticity in the medical issues as well as the legal issues. Further, in responding to deposition questions and in assisting in witness preparation, the residents are able to provide background medical knowledge that only comes from years of medical training and to provide responses to deposition questioning that more closely replicate responses a lawyer is likely to encounter during an expert deposition. This level of authenticity cannot be replicated by utilizing law students or other lay people as witnesses. Moreover, by providing this course as an opportunity for cross-training to medical residents and law students, the residents become invested in the process in a way that ensures meaningful and authentic participation on their end. Medical residents participate in this course as part of the Practice Management component of the Grant Family Medicine Residency Program. Medical residents receive instruction on the ways in which physicians interact with the legal system during the Practice Management Boot Camp and Practice Management monthly sessions of the residency program. As such, by the time the residents participate in the cross-training exercise with the law students, they have an appreciation for the fact that, as physicians, they will likely be deposed at some point in their medical career. Thus, the residents have a context for the exercise and are likely to not only take the exercise

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Bolding the Bold

By Bruce A. Campbell

A troop of nine circus acrobats appear in the ring. Assembling themselves on each other's shoulders with arms locked, they form three successive layers of four, three and two men. The audience remains silent. Then struts in from the wings a spangled 10th member. He poses resplendently in front of a nearby ladder and trampoline and then ascends the ladder. He makes several false starts for dramatic effect. Finally, having garnered the full attention of the audience, he jumps onto the trampoline and is catapulted, with a double flip along the flight path, to the top of the stack of his nine comrades. Aloft the completed pyramid he bows to the crowd and receives ringing applause; the other nine guys remain – necessarily – immobile. He then jumps down with another flip and more crowd approval. The other guys disassemble themselves and bow to muted recognition.

So too is it when The Ohio State University's "Best Damn Band in the Land" does Script Ohio in a packed Horseshoe. The strutting drum major, his tall hat nearly scraping the ground behind him, guides the instrument-playing band members through a snaky path to form the letters. Then the *pièce de réstance*: the drum major gallantly marches to the spot for the dot on the "I", points his baton to the precise blade of grass on which an honored sousaphone player is to stand. Bowing dexterously, he places the bell of his instrument and salutes with his hat. The huge crowd goes … let's just say "Ape Stool." As for the flute player back somewhere in the first "O", Mom is the only one acknowledging her particular contribution to the spectacle. Glory is not always fairly distributed; the real weight-bearers of an enterprise too often go under-recognized.

The Columbus Bar Association makes strong efforts to keep this particular organizational foible at bay. In that vein, it is time to turn the klieg lights, verbal and pictorial, on one of the souls who are the underpinnings of the association. The subject is She'lia Bolding who, with Director Marion Smithberger, is the core of the Columbus Bar's Lawyer Referral Service. Since this article is accompanied by photos of She'lia in her always-colorful and always-unique regalia – she has four closets and is "striving for one more" – you already have a glimpse into her persona. You may be certain that, striking though her wardrobe may be, it is a dull match when compared to her spirit and presence in whatever space she is occupying. She is – in the best possible sense – impossible not to notice.

She'lia's family roots are deep and varied. The family name, Caroll, was that of the slave master of early ancestors. There is also a Native American Blackfoot tribe strain in her lineage, and she recently discovered genealogical connections to Sierra Leonean and Hebrew kinsmen. She firmly believes these diversities help give her a sense of connection.

She's the oldest of seven and attended Fulton St. Elementary and East High School. Subsequently, she held an array of jobs including a tutor at a school for pregnant girls, a hotel worker and a Columbus Health Department nuisance-abatement officer, aka "rat patrol." She worked for Turner Construction for four years while they were refurbishing the above-mentioned OSU stadium. Having a flare for dancing, she dreamed of being in a New York musical.

Fourteen years ago, She'lia offered her customer service talents – but not her rodent expertise – to the Lawyer Referral Service, which wisely accepted them. Whether or not the job description was explicit, she soon learned that it entailed talking on the phone and occasionally walk-in interviews with folks who often are frightened, bewildered, questioning, disappointed, enraged, rude and even delirious regarding the legal system and its effect on them. On good days, she has rational conversations with people about what type of lawyer would best meet their needs, and she is able to hook them up with appropriate LRS panelists. Matches are made and clients and counsel are pleased. All too often, however, she must try to communicate with callers who apparently blame her for every bad thing, real or imagined, that happened to them since they were "in utero." They can't or won't understand that she cannot always fix every vexation. However musical she may be, she can't always "soothe the savage beast." Nonetheless, nobody can say she hasn't tried.

Then there are those other things she does that certainly did not appear in the job description but which she nonetheless undertook on her own initiative. Recognizing that LRS serves only those who have ready lucre to hire counsel and that Legal Aid and other such established providers of legal services to the poor cannot alone stanch the flow of need, she decided to get personally involved another alternative. That "something" meshed into the Lawyers for Justice Program. She took it upon herself to establish and coordinate seven free LFJ clinics in Franklin County. Volunteer lawyers appear at these clinics held in churches and other community buildings to assist drop-in clients with basic legal advice. The program has helped hundreds of people who would not have gotten the answers they needed without it. A good bandage applied timely is often more valuable than an operation too-long delayed.

One more thing makes She'lia priceless around the old C, B and A. She is a spirit-raiser and a friend-maker, without which the joint would be much less fun to work in. Thank you She'lia!

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Judicial Votes Count!

By Amy B. Koorn

Chief Justice Maureen O'Connor kicked off the 2015 Election on Sept. 1, 2015 with an education initiative for voters that provides candidates' biographies as well as job descriptions for the Court office they seek. The website, blogs.uakron.edu/judicialvotescount, is hosted by the University of Akron Bliss Institute of Applied Politics and by its very name, conveys the Chief Justice's sentiments on the important role she believes judges have.

"Judges make decisions that affect our lives every day and in countless ways. That's why we should care about whom we elect to serve as judges. Judicial Votes Count is a nonpartisan partnership committed to providing you, the Ohio voter, with everything you need to make informed choices about judicial candidates, including why the candidate is running, their legal experience and what judges do."[1]

The initiative is straightforward. The Judicial Votes Counts site aims to educate voters who otherwise are unfamiliar with the candidates or the function the judges serve, with the purpose of making voters feel comfortable casting their votes. According to the site survey, confusion and lack of knowledge account for the bulk of missing judicial votes. But, the Chief aims to change this through education and communication.

In a recent interview with the Chief Justice, she offered some feedback on the success of the site. Unequivocally, the Chief Justice viewed the effort as a "great" first year but noted there is room to tweak the site for the upcoming 2016 election cycle where there will be three Supreme Court races on the ballot, including her own. In reflecting on the work that lies ahead, the Chief Justice readily acknowledged the biggest hurdle she and the site's partners – the League of Women Voters, the Bliss Institute, the Ohio State Bar Association, the Ohio Newspaper Association and the Ohio Association of Broadcasters – have is to get the word out that the site exists and make voters aware of its offerings.

In 2015, the Chief took to the airwaves, speaking on radio talk shows and giving television interviews in Columbus and Cleveland. She also publicized it through print media, by writing Op-Eds that ran in all Ohio's major newspapers as well as local publications. She is grateful for the attention the media collectively provided and knows that a lot more is necessary. To that end, she hopes to team with other candidates, particularly those who have high voter turn-out, like the Senate and Congressional races, to ensure heightened awareness and increased site traffic. In an effort to show support for all branches of the government, she hopes even the Top of the Ticket lends his support for the site and all that it represents.

In terms of numbers, Judicial Votes Count website captured 10,570 unique visits between Sept. 1, 2015 and Nov. 3, 2015. Site visits spiked at 9 a.m. on Election Day with 240 visits, accumulating 2,033 visits over the course of the day. In total, the site was viewed 12,761 times, meaning some visitors went to the site more than once. Of those who looked at the site, there were 60,525 pages viewed. In other words, of the roughly 10,000 people who went to the website, each viewer looked at six different pages within the site. The "Know Your Candidates" page, which listed the candidates with links to their respective bios, received 32 percent of the views and was the most frequently visited page. Geographically, 28 percent of the views came from Columbus voters, 5 percent from Cincinnati voters, 4.6 percent from Akron and 4.02 percent from Cleveland.

For comparison purposes, the Columbus Bar Association's website, www.cbalaw.com, had 154,150 visits in 2015 from 77,851 unique visitors and page views totaled 451,010. For the mathematically challenged readers, that translates to three page views for each visit to the site. To compare apples to apples, on average the Columbus Bar's site garners 12,846 visits per month – two thousand more than the Judicial Votes Count site received for the entire time it was available. While those numbers show the site's popularity has room for improvement, the Chief Justice was pleased for the inaugural effort and will continue to support the effort to not only make this the preferred resource for voter information on judges but also convince voters why these elections should matter to them. To that end, there is a role each of us can play in educating the electorate.

Regardless of whether your practice includes appearances before judges, we are all officers of the court. At one point, we all took an oath administered by one of the Justices and, for one reason or another, it was a momentous occasion. Clearly, we have all experienced the power, the importance and the significance that the judiciary has on our lives. Now, multiply that by the number of appearances made every day before judges across the state, at all levels, on all types of cases, and we can begin to appreciate the Chief's initiative. As the title suggests, Judicial Votes Count. To the extent the general electorate does not know enough about the candidates to cast a vote and we as lawyers know how much judges matter, do we not owe it to our profession to communicate the meaningfulness of the opportunity to elect the individuals tasked with applying the law? As the Chief remarked, "It is such an important position, be it a traffic ticket, a child custody dispute or a probate matter. Judges affect so many lives in very fundamental ways; the people who are impacted need to be involved in electing their judges."

1. blogs.uakron.edu/judicialvotes-count/why-judicial-votes-count-2/

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Home Sweet "Homestead"

By Lloyd E. Fisher Jr.

"Oklahoma," a classic American musical, is a light-hearted look at the serious tensions resulting from some of the most important legislation in our history: the Homestead Acts. The lyrics of "Farmer and Cowboy" illustrate the friction between the ranchers and farmers over the use of the land that could be acquired under the homestead legislation.

When Thomas Jefferson arranged the Louisiana Purchase in 1803, he envisioned a western United States covered with fertile farms. That vision was not shared by the large-plantation slaveholders of the South who opposed the homestead concept. Although homestead legislation was introduced in Congress, it wasn't passed until 1860 but was vetoed by President Buchanan.

After Lincoln's election and the secession of the southern states, an act passed in 1862 offered the first homestead provisions. Under its terms, an adult citizen or an immigrant who declared the intention to become a citizen could receive 160 acres of public land by paying a small filing fee, building on the tract, living there for five years and farming at least five acres. After five years, the homesteader received clear title to the entire tract.

The 1862 Act was followed by a long line of homestead legislation. By the end of the last homestead grant in Alaska in 1988, it was estimated that the federal government had granted about 1.6 million homesteads, a total of nearly 270 million acres – almost 10 percent of the total U.S. land area. The federal legislation allowed women to claim a homestead before the Constitution was amended to allow them to vote.

With little hope of becoming landowners in their European homelands, many prospective farmers were lured to America by the homestead laws. Between 1870 and 1900, over 2 million immigrants arrived from Germany, Czechoslovakia, Sweden, Norway, Ireland, Russia, England and other countries. At its peak, the foreign-born population of Nebraska was about 25 percent, the Dakotas were 34 percent and Wyoming and Montana were almost 39 percent.

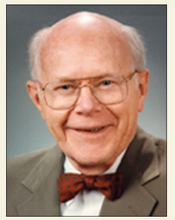
Journeying to the West in horse-drawn wagons, the new homesteaders faced a multitude of hardships – drought, prairie fires, windstorms and plagues of insects. Some gave up and abandoned their sod homes and their homestead claims.

Not all of the effects of the Homestead Acts were positive. Water usage created friction between the ranchers and the farmers. Large investors and speculators schemed to acquire timberlands and oil-rich areas and there was fraud and misuse of some of the homestead lands. Tragically, the homestead land rush was also part of the final displacement of the remaining Native Americans.

A national park in Beatrice, Nebraska memorializes the Homestead legislation through the story of Daniel Freeman. Freeman, an Ohio native, was one of the first persons to file a homestead claim under the 1862 Act. He is said to have filed his claim 10 minutes after midnight on Jan. 1, 1863.

While on the homestead, Daniel proposed by mail to his future wife, who lived in Iowa. They married and had twelve children. A member of the Freeman family lived on what is now the park site until 1931. Freeman was the plaintiff in a lawsuit opposing Bible instruction in the local public schools and in 1902, the Supreme Court of Nebraska ruled in his favor.

Authorized by an act of Congress that was signed into law by President Franklin D. Roosevelt on March 19, 1936, the Homestead Monument and Park are scenic reminders of an important and fascinating period in American history.



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Refugees or Asylees?

By David S. Bloomfield Sr. and Orsolya Hamar-Hilt

Early in its history, the United States formed, in part, out of a need for freedom of beliefs, actions and speech. However, our founding fathers could not have the foresight to instruct us on modern times, knowing how these ideas would continue to evolve as American values, and at times, points of contention.

In light of the European refugee crisis, the issue of refugees and asylees to the United States once again became an everyday topic. Undocumented persons in the U.S. and their fate is an issue that has yet to be resolved. In fact, it's now the subject of a lawsuit currently before the United States Supreme Court despite the executive policies by President Obama, Deferred Action for Childhood Arrivals and Deferred Action for Parents of Americans and Lawful Permanent Residents. The subject of legal and illegal immigration is frequently discussed by current presidential candidates. Each of them has a unique approach how to solve the issue. It is questionable whether any of those possible policies, if implemented, would offer a comprehensive solution. In this unresolved matter, a new one arose. The argument is whether the United States should allow Syrian refugees into the country or, more specifically, whether a temporary ban on all Muslims is legally possible.

What is the difference between a refugee and an asylee? According to the United Nation's 1951 Convention, a refugee is someone who is unable or unwilling to return to his or her country of origin owing to a well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion.

Immigration and Nationality Act 101 (a) (42) defines refugee as "any person who is outside any country of such person's nationality or, in the case of a person having no nationality, is outside any country in which such person last habitually resided, and who is unable or unwilling to return to and is unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group or political opinion."[1] The rule further states that the president, in the above described situation, may classify any person who is within the country as a refugee.

To qualify as a refugee, one must receive a referral to the U.S. Refugee Admissions Program. The policy of the USRAP program goes through a convoluted process each year. Immigration law requires that the executive branch review the refugee situation, project the extent of possible participation of the United States in resettling refugees and discuss the reasons for believing that the proposed admission of refugees is justified by humanitarian concerns or is otherwise a national interest.

Following consultations with cabinet representatives and Congress, a determination is drafted for signature by the president. The presidential determination establishes the overall admissions levels and regional allocations of all refugees for the upcoming fiscal year. No refugees may be admitted in the new fiscal year until the presidential determination has been signed.

The U.S. refugee policy is developed and adjusted each year by Congress. The federal government has the final say in the refugee policy; therefore, it is safe to say that current politics always have a lot to do with the outcome. It should be noted that Congress almost always just "rubber stamps" whatever the president sends them.

The concern is whether it is appropriate for Congress to determine which group needs protection. If Congress does not recognize a group of people as an ethnic group then, regardless of the possible humanitarian concern, those people cannot come to U.S. Or can they?

In 2015, an ongoing incident of migration of thousands of Rohingya people from Myanmar, formerly known as Burma, and Bangladesh began. The Rohingya are a Muslim minority group residing in the Rakinhe state, formerly known as Arakan. The Myanmar government refuses to recognize them as one of the ethnic groups of the country, thus they are subjected to strong hostility. Shall the U.S. grant them refugee status despite their religion, or shall we shut down our borders? As an interesting fact, regardless of their religious beliefs, the United States does not recognize them as an ethnic group, thus they are not afforded the refugee status.

The secretary of Homeland Security or the attorney general may grant asylum to an applicant in accordance with certain requirements and procedures or if the secretary or the attorney general determines that such alien is a refugee. The burden of proof is on the applicant to establish that they will be persecuted based on race, religion, nationality, membership in a particular social group or political opinion.

There are two ways of obtaining asylum in the United States: affirmative and defensive asylum. To obtain asylum, the individual has to be physically present in the U.S. Applicants can apply regardless how they arrived to the U.S. or their current immigration status. The application must be filed within one year of the applicant's arrival to the United States. An asylum applicant has a higher standard of proof than a refugee, who only needs to be a member of the class predesignated by the president.

A defensive asylum is a method to avoid removal from the U.S. Individuals are generally placed into defensive asylum processing in one of two ways: They are referred to an immigration judge by USCIS after determined ineligible for asylum at the end of the affirmative asylum process, or they are placed in removal proceedings after being apprehended without proper legal documents.

The difference between refugee status and eligibility to apply for asylum is physical presence in the United States. Who is defined as a refugee is determined by Congress and approved by the president.

Written on the pedestal of the Statue of Liberty is one of the most universally recognized symbols of freedom and liberty: "Give me your tired, your poor, your huddled masses yearning to breathe free." Early in its history, the United States formed, in part, out of a need for freedom of beliefs, actions and speech. However, our founding fathers could not have the foresight to instruct us on modern times, knowing how these ideas would continue to evolve as American values, and at times, points of contention.

1. INA 101 (a)(42)

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seriously but are also incredibly thoughtful as they prepare for the exercise. In sum, allowing the law students to prepare the residents for the deposition process gives them a new professional client experience that is otherwise difficult to imitate in an academic setting.

After the course was initially rolled out last September, the feedback was overwhelmingly positive. Jason Cox, a third-year student at Capital University Law School, participated in the first offering of the course.

"This class was invaluable as it taught techniques and strategies that could directly be applied to real world situations. Through hands-on development and practice, this class provided me with the assurance that I understand the deposition process and will feel confident walking in to take or defend my first 'real world, real client' deposition," Cox said.

The residents also benefit from this interdisciplinary process, and it allows the residents to interact with professionals from a different field. In the process of the deposition exercise, the residents become the experts on the medical issues and in turn educate the law students on the relevant underlying medicine and factual background. Chief Resident A. Jacob Boucher, MD, PGY-3, in the Grant Family Medicine Residency, found unexpected value in the program.

"Initially, I will admit, I was somewhat skeptical about the experience and how it would benefit me as a practicing physician. My skepticism was gone very quickly into the process. It was a great experience and a perfect way to improve my understanding of the justice system and the importance of practicing clear, appropriate and thorough medicine. I think the fact that both the law students and residents were still in training created an unspoken understanding of helping each other out and working towards a common goal. In my opinion it was an overall impactful experience that is beneficial and should continue to be a part of both our training as family medicine residents as well as the law students training," Boucher said.

While the depositions course has a unique opportunity to offer both a skills-based interdisciplinary course for the law students, the interdisciplinary education also benefits the residents. With legal educators constantly trying to innovative the educational process for students, it is inevitable that such opportunities for additional skills-based interdisciplinary courses exist and likely will be utilized in the future.

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Law Schools:
The Great Shift Downward

By Jason M. Dolin

More than a few lattes were spilled by the academics who populate America's law schools as they opened the editorial page of The New York Times on Oct. 25, 2015. There, in the lead editorial … above the fold … on Sunday … in the Paper of Record … ran a Times editorial entitled "The Law School Debt Crisis." In its editorial, The Times identified the law school-operated scam currently destroying the financial futures of thousands of America's law students: the practice by a large number of law schools in admitting un(der)qualified applicants who borrow heavily to pay high law school tuition but who, the schools know or should know, are unlikely to pass the bar exam or find employment to service their debt. According to The Times, "If this sounds like a scam, that's because it is."[1] The Times explained the origin of the problem.

> *In 2006, Congress extended the federal Direct PLUS Loan program to allow a graduate or professional student to borrow the full amount of tuition, no matter how high, and living expenses. The idea was to give more people access to higher education and thus, in theory, higher lifetime earnings. But broader access doesn't mean much if degrees lead not to well-paying jobs but to heavy debt burdens. That is all too often the result with PLUS loans. The consequences of this free flow of federal loans have been entirely predictable: Law schools jacked up tuition and accepted more students, even after the legal job market stalled and shrank in the wake of the recession.*[2]

The Times called for greater accountability by law schools including tying a law school's eligibility for federal loans to its students' employment outcomes and capping the amount of money that a student could borrow. They suggested that student loan funds be redirected to underfunded legal services organizations.[3]

Although the amounts available under the Direct PLUS loan program were increased in 2006, the problem described by The Times accelerated in 2010 when law school applications plunged and have since continued in sharp decline. As a result, American Bar Association data shows that the 2015 entering class is the smallest since 1973, when there were 53 fewer ABA-accredited law schools than there are today.[4] With that dramatic reduction in the applicant pool, law schools scrambled to keep the tuition money flowing by lowering their admissions standards.

Locally, both Ohio State and Capital lowered their entrance standards since 2011. At Ohio State, for example, the LSAT score that was the 25th percentile score – the lowest 25 percent – for the class admitted in 2011, became the 50th percentile score for the class admitted in 2015. What was considered a low LSAT score at Ohio State just four years ago became its new normal. Capital and Ohio State are not alone. Between 2011 and 2015, eight of Ohio's nine law schools lowered their LSAT admission standards, particularly for those applicants with LSAT scores in the bottom quarter of their entering classes. In other words, the admissions bottom got lower.

Revenue Über Alles

In attempting to maintain or increase their flagging revenues, many law schools admitted large numbers of un(der)qualified applicants even though those schools knew or should have known that those applicants had limited prospects for completing law school and passing the bar exam.[5] How do we know the law schools knew? Because decades of data have shown that an applicant's score on the LSAT is a statistically significant predictor – the only statistically significant indicator prior to law school admission – of how that applicant will perform on the bar exam.[6] As stated by Kyle McEntee, executive director of the law school watchdog Law School Transparency (LST), "According to the Law School Admissions Council's National Longitudinal Bar Passage Study, the LSAT is the best predictor before law school as to whether a student will pass or fail the bar exam. If a school admits students who face a high risk of failing the bar, we must ask whether the school is exploiting those students and whether other parties are complicit."[7]

We also know it because research reported by LST shows that there are well-documented bar exam "failure bands" for those with low LSAT scores. For example, the research shows that law school applicants who score 144 or less on the LSAT, representing the bottom 23 percent, are at "extreme risk" of bar failure. Those scoring 145 to 146, the lowest 26 to 30 percent, are at "very high risk" of bar failure and those scoring 147 to 149, the lowest 33 to 40 percent, are at "high risk" of bar failure.[8] Unfortunately, based upon their LSAT scores, the bottom quarter of law students admitted to Capital, Dayton and Ohio Northern law schools in 2015 are at "extreme risk" of bar failure,[9] with the bottom quarter at Akron and Toledo at "high risk" of bar failure.[10] Worse still, students in the bottom quarter of admitted law classes tend to borrow the most money to pay their tuition because they typically don't get merit scholarships.[11] High debt coupled with an extreme risk of bar failure is a prescription for financial disaster for those students. Law schools used to have standards. Now, they just seem to have bottom lines.

Some schools have tried to justify the morally questionable practice of admitting un(der)qualified applicants by claiming that they are providing these students with an "opportunity" to advance and, no doubt, there are exceptions who beat the odds. But, really … do we look that gullible? For law schools, it's all about the money. In general, admitting students with poor credentials doesn't create opportunity. Indeed, the opposite is true, it ties them down for years with crushing and unsustainable debt. It's not an opportunity; it's a debt-sentence.

The Devil's Bargain

The law schools that admitted un(der)qualified applicants in exchange for their borrowed dollars made the devil's bargain, betting against the evidence – and with their *students'* borrowed money – that these un(der)qualified applicants would pass the bar exam in reasonably acceptable numbers. It hasn't worked. This should surprise no one given the well-established correlation between LSAT scores and bar passage rates. Nationally, the scores on the multi-state portion of the July 2015 bar exam declined to their lowest level since 1988.[12] For example, for the July 2015 bar exam, pass rates in California were the lowest since 1986. In New York, they were the lowest since 2004, and in Pennsylvania, they hit an historic low.[13]

Not surprisingly, there's also been a drop in the Ohio bar passage rate that corresponds with the general lowering of law school admission standards. For the Ohio bar exams administered between July 2006 and July 2013, the annual passage rate for first time bar takers remained fairly steady, hovering between a low of 85 percent and a high of 88.8 percent. The July 2013 first time passage rate was 87 percent.[14] Things changed dramatically, however, for those who took Ohio's July 2014 exam. Those 2014 first time bar takers entered law school in the fall of 2011 when, nationally, law school applications plunged 11.4 percent compared to the fall of 2010[15] and when admissions standards were declining. And, not surprisingly, in July 2014 the Ohio bar passage rate dropped a full six points to 81 percent for first-time takers compared to 2013. Six points is a sharp drop. Ohio hadn't seen a year-over-year drop that large for at least fifteen years.[16] It got worse. For the July 2015 bar exam, the passage rate for first-time takers dropped again to 80 percent, the lowest rate in 10 years.

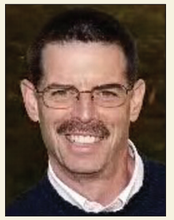
Happy Days Aren't Here Again

The days of easy federal loan money for law students may be coming to an end. For many law schools – particularly those in what the rankings used to call "Tier 4" – that could spell doom. You see, the feds are finally starting to catch on that the federal loan money was *too* available. As stated by Senator Dick Durbin, Democrat of Illinois who sits on the Senate Appropriations Committee, "Now that we've taken the cap off what you can borrow for graduate courses, the [law schools] have decided they are going to just charge to the heavens in terms of tuition for worthless, worthless law degrees."[17] According to Durbin, "When I ask the presidents of universities 'Why do you charge so much to go to law school?' they say 'Because we can; the students are applying and they'll pay whatever we tell them.'"[18] With an endless source of loaned tuition funds from the feds, law schools smelled chum in the water and raised tuition simply because they could, with little apparent concern about the applicants' future employment prospects.

Perhaps LST's Kyle McEntee said it best, "From deceptive employment statistics to outrageous costs to unethical admissions and retention policies, law schools have become punching bags because so many law schools keep doing the wrong things."[19] With their history of political and moral cluelessness as our guide, you can count on law schools to ignore the problems highlighted by The Times and do what they have so often done in the past: hunker down while they first **deny** the problem, **delay** a solution and **pray** that the problem goes away. As stated by Indiana University's Professor Bill Henderson, "I don't think the typical member of the legal academy understands the precarious financial condition of legal education."[20]

Just like law schools had to be embarrassed and ultimately regulated into providing transparent employment data on their graduates, they will likely need to be embarrassed and ultimately regulated into being responsible as to who they admit. As to those law schools that continue to admit un(der)qualified students who they know have a limited chance to pass the bar exam and earn a living sufficient to fund their debt, we can only hope that the ethics they teach in the classroom migrate to the admissions office.

1. http://www.nytimes.com/2015/10/25/opinion/sunday/the-law-school-debt-crisis.html
2. Id.
3. Id.
4. http://abovethelaw.com/2015/12/law-schools-continue-to-bleed/
5. http://www.bloomberg.com/news/articles/2015-09-17/bar-exam-scores-drop-to-their-lowest-point-in-decades
6. http://www.lawschooltransparency.com/reform/projects/investigations/2015/documents/NLBPS.pdf
7. http://lawschooltransparency.com/reform/projects/investigations/2015/analysis/
8. See http://lawschooltransparency.com/reform/projectsinvestigations/2015/analysis/;see also http://www.thefacultylounge.org/2014/08/david-frakt-on-his-shorter-than-expected-presentation-at-florida-coastal-school-of-law.html
9. http://www.lawschooltransparency.comreformprojects/investigations/2015/data/visualize?g=OH&show=lsat#tab_raw-data
10. Id.
11. http://lawschooltransparency.com/reform/projects/investigations/2015/analysis/ ("Scholarships are predominately provided in exchange for relatively higher LSAT scores and, to a lesser extent, GPAs. As price discrimination shifts even more dramatically towards discounting tuition for those most likely to complete school, pass the bar, and obtain a legal job, those who are more likely to struggle pay even higher prices.")
12. http://www.bloomberg.com/news/articles/2015-09-17/bar-exam-scores-drop-to-their-lowest-point-in-decades
13. http://www.nationallawjournal.com/printerfriendly/id=1202743222671
14. http://www.supremecourt.ohio.gov/AttySvcs/admissions/announcement/
15. http://www.lsac.org/lsacresources/data/lsac-volume-summary
16. See The Bar Examiner, March 2011, at 24
17. http://www.bloomberg.com/news/articles/2015-10-30/senators-take-on-law-schools-for-failing-students
18. http://www.bloomberg.com/news/articles/2015-10-30/senators-take-on-law-schools-for-failing-students
19. http://abovethelaw.com/2015/11/are-lawyers-getting-dumber-the-question-may-matter-more-than-the-answer/
20. http://lawprofessors.typepad.comlegalwhiteboard/2015/10/the-times-the-law-school-debt-crisis-editorial.html



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It Takes a Village

By Lindsay M. Bouffard

If being a lawyer has taught me one thing, it's this: There's no prize for learning lessons the hard way. It is well worth your time to learn from more senior attorneys whenever they are willing to share some advice and learn a few lessons the easy way. I've had several outstanding mentors thus far in my career, and their guidance continues to shape me as a lawyer. Here are five lessons that have been particularly influential.

Impeccable Work Product

Not good, not great, but impeccable. Sounds obvious, right? Of course we need to deliver a quality work product, but remember that "impeccable" is a long way from "good" or even "great." Never lose sight of the fact that your first job is to produce impeccable work.

File-Ready Drafts

A mentor once advised me to make sure that any draft I submit is a file-ready draft, even if the senior attorney only asks for a rough draft. Frankly, this did not make much sense to me at first. Thankfully, I had a patient mentor who explained why all drafts should be file-ready, with complete citations, full signature blocks and a certificate of service. The senior attorney might get into a time crunch that forces him to file your draft without further review. Be sure your draft has all of this essential information so that it will not be rejected on technical grounds.

Focus on Problem Solving

Partners often seek out an associate to complete a specific assignment, but what they're really seeking is the answer to a problem. Sometimes solving the problem, rather than just completing the assignment, requires going beyond the specific assignment.

Consider a partner who provides you with a set of facts and asks you to identify a client's actionable claims. You brainstorm a list of possible claims, but then your research indicates that none of these claims are viable based on the facts provided. If you simply reply to the partner that there are no actionable claims, then you've completed the assignment, but you haven't solved the problem. The partner is left with nothing helpful to tell the eager client.

Instead, take that extra step and identify what additional facts are needed for an actionable claim. Your research will provide a roadmap for future action that the partner can convey to the client. It is much more beneficial for a client to learn what facts are needed to develop a claim rather than simply hearing that he has no claim at the present time. By keeping your focus on problem solving, rather than just completing assignments, you are certain to distinguish yourself from your peers.

Have a Plan

Sometimes that plan is going to need to be revised. Other times you will need to completely scrap your plan and start anew hopefully having learned something in the process. It is most important that you have a plan and that you are working toward something – anything – rather than letting a fear of failure stop you from even making a plan. This advice applies to all facets of your career whether it be determining a practice area, business development or searching for a new job.

Be More Curious Than the Average Person

I have never seen a job description that requires curiosity, but perhaps attorney job descriptions should identify curiosity as a desired trait. Being a lawyer often requires you to do some digging to get the information you need. A little extra curiosity goes a long way.

When opposing counsel notices the deposition of a seemingly unimportant witness, don't just assume your adversary made a misstep. Be curious. Why does opposing counsel think this witness is relevant? What could this witness know? How could this witness change the case?

This advice is equally applicable to your clients. When a client tells you he or she does not have any relevant documents, inquire as to why the documents do not exist and learn more about the client's documentation practices. Asking these additional questions is likely to reveal flaws early in the litigation thus giving you the opportunity to minimize them.

It takes a village to make a great lawyer. You'd be wise to invest some of your time in learning from the other lawyers who make up your village. I have found that most lawyers are willing, even eager, to share their experiences with new lawyers.

A brief but sincere thank you to Jessica Davis, Vince Holzhall, Todd Sarver and Mike Traven, a few of the lawyers who make up my village.

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COMMON LABOR & EMPLOYMENT MISTAKES YOUR CLIENTS MAY BE MAKING

By Anne E. McNab

One problem that all employers share, regardless of a company's size, location or industry, is unintentional mistakes in their policies and procedures. Although employers believe they are complying with federal and state labor and employment laws, many come to learn – after costly litigation – that they were, unfortunately, mistaken. Below is a list of common labor and employment mistakes made by employers to review with your clients to ensure that their policies and procedures do not have unintended consequences.

Using outdated handbooks

All too often, employers let their employee handbook become outdated, both with policies that do not comply with current law and with procedures that are no longer followed by the employer. In the event the Department of Labor, Equal Employment Opportunity Commission or the National Labor Relations Board come knocking on the employer's door, which they have been doing with increased frequency, each agency will want to review the handbook to ensure the policies and procedures comply with current laws. As a result, it is important for employers to, at a minimum, do a self-audit of their handbook each year.

Not training administrators, supervisors and managers on FMLA requirements

The DOL has vowed to increase the frequency at which it conducts on-site investigations for Family Medical Leave Act compliance. In addition to conducting an audit of the company's FMLA policies and procedures, it is imperative that employers train their managers, supervisors and administrators on their role in administering FMLA and following the FMLA policy. Supervisors, managers and administrators should all be prepared to recognize when the FMLA may apply and what steps to take. Encourage your clients to conduct FMLA training to reduce their liability.

Forgetting to include the GINA safe harbor disclosure on requests for medical information

Many employers use the same forms year after year, decade after decade, without taking the time to revise and update the forms to comply with current laws. One of the most concerning issues relates to employers requesting medical information from their employees, including requests for Family Medical Leave, accommodations under the Americans with Disabilities Act and workers' compensation claims. All of these requests for medical information should be accompanied by the Genetic Information Nondiscrimination Act safe harbor disclosure, which protects an employer from liability should a medical provider inadvertently provide the employer with genetic information that should not have been provided. Employers should confirm that the GINA safe harbor disclosure is included with all requests for medical information.

Failing to comply with the Fair Credit Reporting Act

Employers increasingly use background checks – including social media research – to inform their hiring decisions; however, many forget that using this type of information is governed by the Fair Credit Reporting Act. Employers must follow specific steps to inform applicants of their rights under the FCRA, and failing to do so can amount to a costly mistake. Encourage your clients to review their hiring procedures for compliance with the FCRA.

Thinking that all salary employees are not required to be paid minimum wage and overtime

Another common mistake employers make is assuming that all salary employees are exempt from the Fair Labor Standards Act minimum wage and overtime requirements. That is not the case; the employee must also be performing work that is classified as exempt. The FLSA exemption provides an exemption from the minimum wage and overtime requirements only for "any employee employed in a bona fide executive administrative, or professional capacity or in the capacity of outside salesman" who meets the salary basis test and performs specific job duties. 2016 is an important year for employers to assess FLSA compliance as the DOL is expected to release new FLSA regulations in 2016 which will raise the salary threshold and further limit the exemptions to minimum wage and overtime requirements.

Overlooking the need to track hours worked by exempt employees

Employers often focus much of their energy on tracking the time and attendance of nonexempt employees. However, it is just as important that employers track the hours and attendance of exempt employees. The hours worked for both non-exempt and exempt employees factors into whether an employee is eligible for FMLA leave and also determines full-time employee status under the Affordable Care Act. For these reasons, it is important for employers to take a second look at their time keeping practices to ensure that exempt employees are being tracked too.

These common mistakes highlight only a few of the labor and employment mistakes your clients may be making. It is always encouraged to have your clients conduct a yearly audit of their handbook and human resources procedures. Let this be a guide to start the conversation with your clients about mistakes they may not even be aware they are making.

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Human Trafficking Knows No Age:

The Role of Attorneys Representing Juvenile Trafficking Victims

By Victoria A. Bader

Representing children is hard under the best of circumstances; advocating for children who have been severely traumatized by rape, family neglect and controlling and violent adults is even more challenging. That is my job. I am the 2015-16 Greif Fellow in Juvenile Human Trafficking. The fellowship allows a recent graduate of The Ohio State University Moritz College of Law the opportunity to assist juvenile human trafficking victims with a wide variety of legal needs. Through my experiences in law school, I knew that I wanted to practice criminal law and already had experience working with clients in the juvenile court. However, just five months into my fellowship, I am surprised how working with exploited youth has influenced the way I interact with clients, pushed my ability to collaborate with law enforcement and prosecutors and challenged my ethical duties to my clients.

Trauma

Many of the children in the juvenile justice system have experienced trauma, but juvenile victims of human trafficking have often endured the most extreme forms. Forced into labor or sexual acts, physically and sexually abused or even exploited by family members, these children face internal challenges that most adults could not imagine. These events cause severe emotional trauma in children and, in many cases, lead to post-traumatic stress disorder.

Attorneys and courts must be educated about how a traumatic history affects a child's ability to perceive events and control impulses. For example, children coping with trauma often face "triggers" from stimulating events or memories. As a result, the child is likely to experience reduced or impaired impulse control, an increased tendency to run from home or placements and have severe trust issues with most individuals in their lives.

These factors influence the way I communicate and engage with my juvenile clients. Due to age, traumatic history and the charges against my clients, I have become more cognizant of the way I discuss difficult topics with my clients. I have learned that my clients may never be willing to share details of their past or experiences. However, in addition to my role in the courtroom, it is important to ensure that my clients know that they can trust me to advocate for their legal interests and ensure that their voice is heard in court.

Juvenile Delinquents

While those forced into trafficking situations are often considered "victims," in reality, they are they are not treated with the same compassion by our justice system. Juveniles exploited by sex traffickers are often charged as juvenile delinquents and treated as criminals – meaning they can be charged with a crime, held in detention facilities and shackled in court. Even when law enforcement and prosecutors have knowledge that child has been trafficked, that child is still treated as a criminal. The charging and continued treatment as a juvenile delinquent for child trafficking victims is not only unjust but serves to further traumatize them.

Ohio has recognized the inherent flaw in this logic by passing a Safe Harbor Law for juveniles. O.R.C. §2152.021(F) allows for statutory diversion of charges related to trafficking in persons. While this statute is routinely utilized in Ohio's largest counties, smaller counties throughout the state have yet to provide diversion for children in these cases; even where Safe Harbor is being implemented, further changes and accommodations are necessary in order to truly support victims and avoid further traumatization.

Confidentiality

All attorneys have a duty to keep confidential any information regarding the representation of a client, absent a client's informed consent or other exception. However, as an attorney working closely with law enforcement, prosecutors, court staff and service providers, I have noticed that these ethical standards often become murky. Even though there is a strong motivation to collaborate with other professionals, this duty should not be abandoned for human trafficking victims.

Sometimes, an attorney may be the only person that knows the whereabouts or contact information of a child and that information would be beneficial to law enforcement or caseworkers. If a juvenile human trafficking victim is missing, do I have a duty to disclose information of her whereabouts or contact information to law enforcement? Does her mere absence from home rise to the level of "reasonably certain death or substantial bodily harm" that would allow me to disclose confidential client communications? The language of Rule 1.6 of the Ohio Rules of Professional Conduct allows some leeway in determining when confidential client communications can be shared.

While all interested parties urgently want to ensure the safety of these exploited youth, it is important for me to remember that my role is to serve as the child's attorney. Trust is the cornerstone of the duty of confidentiality. If I freely share client information, even with the best intentions, the client loses trust in the confidential nature of the attorney-client relationship. This ultimately undermines my ability to advocate for the client and serves to further alienate that client.

As a new defense attorney, I have already realized that my role requires me to be more than just a lawyer. I am a social worker, a mentor, an advisor, a confidant and sometimes, the only person my clients can trust. The lessons I have learned during my time as the Greif Fellow in Juvenile Human Trafficking at The Ohio State University Moritz College of Law have influenced the way I interact with clients and have set the tone for my future as a legal advocate.

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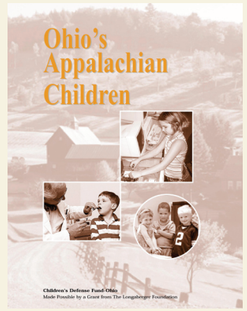
Appalachia's Children

By Michael L. Corey



When my father surveyed the landscape of his future as a child in Appalachia, what future did he see for himself? The child of immigrants, the odds that my father would end up practicing law in Columbus – and writing a long-time column for this publication – were not terribly high. On the cusp of his graduation from law school, he had flipped the odds. He had the luxury at that point of surveying his future and choosing where and what he would do next, a luxury that too many of his fellow Appalachian natives too often do not have.

My father grew up in Charleston, West Virginia and ultimately chose to stake out a career in Columbus – halfway between his family and his in-laws. Columbus has long been a draw to residents of Appalachia, an Ohio region that is oft misunderstood and mischaracterized part of our state's rich history.

In the fall of last year, as I surveyed my own future, I chose to leave my legal practice at Bricker & Eckler and to pursue a dream of working in child advocacy at the Children's Defense Fund. Our work does not involve the practice of law, but the pursuit of laws and practices that can better serve our state's impoverished children and to ultimately eliminate child poverty.

This year, we are publishing a comprehensive report on Appalachian Ohio's children, an update of a report we released in 2001. Because of my father's legacy, I am admittedly affected by this work personally. Each Appalachian child deserves the chance to make choices and have opportunities like the ones my father had, without the odds being so heavily and uniquely stacked against them.

The comprehensive report will provide data, research and recommendations to improve the playing field for children of Appalachia. Among the key findings:

1) Economic stability of children and families has not improved since 2001. The child population in Appalachian Ohio has decreased in the last 15 years, but a higher percentage of children live in poverty. Appalachia as a region and many counties within the region have the highest child poverty in all of Ohio. Families continue to have household incomes well below the rest of the state, and unemployment remains higher than statewide.

2) Babies in the region are at increased risk. The region has seen a rise in the proportion of babies born at low birth weight since 2000. Like the rest of the state, babies in Appalachian Ohio face high rates of infant mortality compared to national levels. Perhaps most troubling of all, the region has seen alarming increases in the number of babies born addicted to drugs.

3) High-quality early childhood care and education is critical for children but is challenged by relatively higher numbers of children per available space and difficulties on the business and workforce side of providing programs.

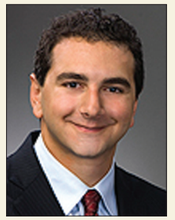
4) There are clear health disparities between Appalachian children and children statewide. Children in Appalachia face shortages of primary, dental and mental health providers in addition to long distances to children's hospitals. Health issues such as child obesity, food insecurity and lack of dental care disproportionately affect Appalachian children. At the same time, creative approaches are being taken to provide the health care that children need.

5) Results are mixed for educational outcomes for primary and secondary students. Children are meeting key milestones of kindergarten readiness, third grade reading proficiency and high school graduation on par with the rest of Ohio. Appalachian school districts are leading the state in students earning credentials and college credit while still in high school. However, students from Appalachia are significantly more likely than their peers statewide to need to take remedial coursework in college. Fewer adults in the region have completed four-year degrees.

As attorneys, we are uniquely motivated to value fairness. We require it for our clients, be they corporations or colleges, governments or agencies, trusts or individuals. And yet, the 32 Appalachian counties of Ohio need more help in achieving a fair shake for the 450,000 children that call it home.

One such child is Emily Wilcox, one of five high school seniors who we will honor May 19 at our annual Beat the Odds Scholarship Awards Celebration in Columbus. Hailing from the Ohio River town of Ironton, Emily has endured many challenges in her short life, including losing both of her parents in the same moment – her mother, a beloved special education teacher, was murdered and her father is gone, serving a lifetime in prison. Despite it all, she holds a 3.93 GPA, numerous leadership positions and is on her way to pursue higher education. I invite you to come out to our scholarship event to support Emily and our Appalachian children.

As the eyes of the country fixate upon our city and state over this presidential election cycle, let's show the world that Ohio has not forgotten her Appalachian children. Our legal community is able to assist in the Appalachian region's growth. Practitioners can dedicate time and resources to the region's challenges. As stewards of justice, each problem needs advocacy from the expertise of lawyers, in combating poverty and its ill effects that need not limit yet another generation in our state.



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MEDIATION IN DOMESTIC RELATIONS CASES:
WHEN CHILDREN ARE INVOLVED

By Sandra Mendel Furman

Mediation in domestic relations court frequently involves children. The children may be products of a marriage, a long-term relationship, a same-sex partnership, a very brief relationship or single encounter between the parties. Grandparents may seek companionship time with grandchildren. The mediation department in the Franklin County Domestic Relations and Juvenile Court also handles child protection mediations as well as juvenile victim offender cases on a referral basis from the court.

Mediators routinely take CLEs detailing children's interests, needs, emotional health and physical safety. Trainings are offered annually by the court to ensure mediators are current on trends and matters of concern to the bench and bar.

Although the court will be looking towards the best interests of the child in making decisions about children, the mediator almost never has the child present in the room - the exception being the JVOMP cases. Therefore, mediators in the cases involving children may need to re-direct the focus of the parties so that the children's interests are addressed in a cooperative, forward-looking manner.

In these anecdotes below, I've spoken with two experienced central Ohio mediators who routinely handle domestic relations cases. From these mediation experiences, I've reflected on key points from their strategies. Their cases illustrate how to best incorporate children's needs into mediation. All personal identifiers have been removed. Confidentiality is a core principle in mediation.

Bruce Coleman

Bruce Coleman is a mediator with 21 years of experience. He is in private practice in the areas of family, labor, environmental and civil disputes. He is a Rule XVI mediator.

"I was given the opportunity to work with clients who had been married for 15 years and had three children. The couple established a profitable business and enjoyed an upscale lifestyle.

This case had domestic violence, emotional abuse, verbal abuse, infidelity, drug use and misuse of marital assets. They both had moved on and had a new significant other in their lives.

Both parties wanted a divorce. Each wanted to be the residential parent. Neither party trusted the other. I requested that they create a communication and a consequence plan, provide an inventory of items, not assets, important to them and a statement why they would be the better residential parent. Each was advised and reminded to consult counsel.

At the end of the second session, they had developed a communication plan and a consequences plan if either failed to follow through. A framework for a parenting plan schedule was created.

I asked the couple to work on a lifestyle analysis for our third session. They were to sit down with their new significant others and determine what type of impact their lifestyles would have on the children.

At the third session, the parties detailed how their lives were transitioning and how that affected the children. Trust issues were explored in caucus, and strategies to remedy trust concerns were tackled in joint session.

The parties decided that implementation of their plan would be done in stages to measure successes and identify problems. The parties agreed that if they experienced any impasses in the plan, they would return to mediation. To date, this agreement is a success.

I've met with the parents twice since the initial agreement was reached to make desired changes. I consulted with the parties' respective counsel to give each an opportunity to critique the working document. The attorneys' feedback was positive and critical to the parties' buy-in."

In this case Coleman used typical mediation techniques: caucus, defining mutual interests, homework between sessions to define the agenda and engaging the parties in creative problem solving. This allowed the parties to assert individual interests and provided a safe place to communicate in a confidential environment without risk of censorship.

Coleman's creativity in assigning a communication plan, budget or lifestyle task and an agreed upon consequence plan for lack of follow through provided breakthrough opportunities for the clients. Attorneys were deliberately included to evaluate the tentative agreements.

LaTanya Moss

LaTanya Moss mediates in the area of families, education, administrative agencies and special needs. She has a master's degree in Alternative Dispute Resolutions. She is a Rule XVI mediator and is in private practice under the business name Creative Solutions Mediations.

"Child Protection Mediation cases are unique. In 'standard' divorce mediations, there are typically two parties negotiating on their own behalf. More often than not, this happens without attorneys present in the room. Parties in CPM may consist of Child Protective Services, the biological parent(s) and their attorneys along with the legal custodian(s) and counsel. The table might have nine or more seated parties – all with their own agendas, concerns and interests.

The attorney's relationship with the client, knowledge of the law and advice is the best tool a mediator has in facilitating an agreement that 'makes sense' and is within the bounds of the law. CPM cases all have allegations of abuse, neglect or dependency on the parent's part. The parent(s) desire reunification whether it be unsupervised parenting time or regaining full custody

In many CPM cases, what a party wants is not a realistic goal at the present time. The attorney's role is to explain the law coupled with the best or worst case scenarios if no agreement is reached, often posed by the mediator though questions directed to the attorney. This can be the turning point in the mediation.

Often after the attorney has spoken with the clients, the conversation is geared to realistic goals. This affords all parties and the mediator the opportunity to create an action plan for reunification or a parenting schedule. A mediated agreement may consist of random drug testing, completion of parenting classes and counseling – all which will afford parties time to take care of their issues while building a healthy lifestyle for themselves and the children.

The mediator needs and wants the attorneys as full participants in this complex and challenging mix of competing interests. The skill sets are complementary and co-exist to facilitate a successful outcome."

In child protection mediation cases, attorneys are typical and necessary participants. The mediator routinely introduces the concepts of Best Alternative to Negotiated Agreement and Worst Alternative to Negotiated Agreement scenarios. By presenting the BATNA and WATNA options, parties often move from intransigence to yes. Win-win scenarios in these intense and often high-conflict environments require skill and patience to communicate. Mediators working in this area must be highly organized due to the number of competing interests, the large number of parties and the high emotional content. As can be seen from Moss's description, attorneys are an integral part of the team effort.

In both of the above cases, parties were forced to consider the impact their choices made on their children. In a significant number of cases, a Guardian ad Litem is involved or may be appointed by the court. The GAL has the specific charge of protecting the children's interest.

It is extremely common for these scenarios to involve significant others. The mediator often has to bring the parties' attention back to the children as these others also have children with parenting schedules which may need to be melded into the parties' parenting time proposals. It is often necessary to address who may discipline the children in these re-built families. The mediator needs to be nimble and pay attention to all concerns raised and the unacknowledged elephants in the room. Mediators may also remind the parties that children are children for life, even after parental legal responsibility ends.

The mediators do not provide legal advice to the parties. Most of the mediators in Licking and Franklin County domestic relations are non-attorneys. The mediators welcome the participation of counsel and encourage parties to review the tentative agreements reached in mediation with counsel.

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Federal Court Oversight of DYS Ends with Celebration of Results

By Alphonse A. Gerhardstein and Kimberly Brooks Tandy

"S.H. is a 19-year-old girl from Cleveland, Ohio who has been incarcerated in Scioto since Dec. 18, 2003. The conditions, policies and practices complained of herein to which she has been subjected include the inappropriate and extended use of isolation, excessive use of force by a JCO, lack of appropriate mental health and medical care and lack of an adequate grievances process to address her concerns. For example, S.H. became suicidal while in Scioto and threw a radio and attempted to stab herself with an ink pen. In response, a JCO choked her around the neck, tackled her to the ground, kneed her forcefully and sat atop her with his crotch area in her face. S.H. was handcuffed and taken to an isolation cell. As a result of this incident, S.H. was required to serve five days of isolation and given 30 days of administrative time added to her sentence to Scioto. During her time in isolation, she suffered severe emotional distress, cried repeatedly, was not permitted to clean her cell properly, was denied recreation and only left the isolation cell to shower. S.H. was not prescribed any medications during this time. S.H. also suffers from chronic foot pain and in August was informed by a doctor at Scioto that she would be given properly fitted shoes. In spite of her grievances on these issues, and representations by staff that she would be fitted properly with shoes, she has yet to receive any proper footwear. S.H. has made repeated requests to see a specialist regarding her foot and her request has not been granted.

— Facts alleged in the S.H. complaint, December 2004

In December 2004, lawyers for the Children's Law Center, Inc., along with private counsel and the Youth Law Center in San Francisco, filed a class-action civil rights lawsuit against the Ohio Department of Youth Services alleging serious constitutional violations regarding the conditions to which females were subjected to at Scioto Juvenile Correctional Facility. The case, which became known as *S.H. v. Stickrath*,[1] has been at the cornerstone of the one of the most closely examined and widely acclaimed juvenile justice reforms nationally. On Dec. 8, 2015, Federal Judge Algenon Marbley signed a celebratory Agreed Order to Terminate the Consent Order after 11 years of litigation and monitoring. What happened between was a great deal of hard work, negotiation, contentiousness at times and in the end, a collaboration which has worked to transform the culture and operations of the Ohio Department of Youth Services.

DYS houses youth at the deep end of Ohio's juvenile justice system in one of several facilities after local juvenile courts have determined by disposition that a youth is in need of treatment and rehabilitation. While at DYS, youth are engaged in programming, mental health treatment and year-round educational opportunities, including vocational school. DYS also operates Ohio's system of youth parole and supports more than 600 community programs throughout the state offering prevention, diversion, and residential and community treatment.[2] When the litigation began in 2004, facilities were overcrowded and lacked effective programming, mental health, education, health and dental care. Violence was rampant, and the use of isolation and other punitive measures were commonplace as a measure to control behaviors. The system lacked the means for youth to access the courts to remedy grievances against the system, and once in the system, the process for obtaining release was arbitrary and unreasonable. These later two issues would form the basis for two other class-action lawsuits, ultimately incorporated into the remedial plan in the *S.H.* case.[3] The U.S. Department of Justice filed a companion case in 2008 involving Scioto Juvenile Correctional Facility and Marion Juvenile Correctional Facility, the latter which closed soon after settlement was reached.[4]

In May of 2008, a 90-page Stipulation of Settlement was entered into by the parties which detailed reforms in nearly every aspect of the DYS system. The settlement was framed around a set of guiding principles to which the parties agreed and which would work to incorporate best practices, evidenced-based programming and transform the culture within facilities. The reforms have impacted every aspect of DYS, including youth assessment and placement, treatment within the facilities, processes for release and reentry and parole supervision. DYS and local courts now have available a continuum of programs and interventions to serve youth closer to their families and in the least restrictive setting. Programming and treatment in the existing facilities and during community supervision is now matched to the youth's risk of reoffending.

The significant shift to a system of community-based programs means that far fewer youth are now sent to DYS. Five of the initial eight facilities have closed, and the average daily population has dropped from roughly 1800 in 2008 to an average of 470 in January 2016.[5] Other changes include:

Safer Facilities

The Path to Safer Facilities initiative by DYS has increased preventative measures, enhanced meaningful activities for youth, revised intervention strategies to hold youths accountable and eliminated the use of seclusion as a punishment. As a result, the rate of seclusion dropped 89 percent while the rate of violent acts decreased by 22 percent when comparing January through November of 2014 to January through November of 2015. Use of force policies were substantially changed, and DYS put into place significant changes in policies to protect youth from sexual victimization.

Boosting Education and Workforce Training

Educational programming improved to include full school days and more expansive options like apprenticeships, career technical programs and opportunities for college courses help youth catch up and complete education and prepare for today's workforce.

Providing Quality Medical Care

Youths receive comprehensive medical, dental and nutritional care to address health problems and prevent issues from occurring. The DYS system now works to provide continuity of care when youth are released back into the community.

Caring for Youth with Mental Illness

Treatment for high-risk and vulnerable populations, with a greater appreciation for Trauma-Informed Care, has been significantly improved and incorporated into all aspects of the program. Youths are provided individualized treatment plans and evidence-based treatment services by a team of professionals.

Ensuring Youth Rights

Youths have access to counsel and the courts through the Legal Assistance Program operated through the Office of the Ohio Public Defender. Youths may receive assistance for claims to challenge the fact of, duration of or conditions of their confinement. Subsequent legislative changes have now placed this authority in OPD's enabling statute. A grievance process, youth councils, the Chief Inspector's Office, and a tip line provide youth with the opportunity to express concerns and make suggestions.

Encouraging Family and Community Partnerships

A critical component of treatment now includes the engagement of family members, volunteers and community partners who are encouraged to participate in all aspects of treatment. DYS provides video conferencing and free transportation to the facilities to keep loved ones connected.

Revamping the Release Process

Prior to the litigation, only 40 percent of youths were released before or at the time of their Minimum Sentence Expiration Date. Many youths received up to 180-day extensions for behavior, sometimes multiple times. Now, 60 percent of youths are released before or by the time of their MSED and release is presumed unless one of the narrow exceptions is met. Intervention time to extend stays has been significantly reduced.

Focus on Re-entry

Youths and their families are active participants in individual re-entry meetings, progress reviews and transitional services to ensure continuity of services and programming. Re-entry planning begins when the youth starts the program.

Institutional reforms with federal judicial oversight must also be coupled with measures which will sustain the changes long term; the stipulation included this provision. To address this, DYS created an Office of Quality Assurance and Improvement to ensure that DYS offers a positive culture for youth and staff by improving processes, procedures and outcomes through transparency, data reporting, accountability and continuous improvement.

The progression of the litigation was not always without conflict. The parties returned to court on a number of occasions where compliance issues were in question. At one point, the court on its own conducted a Show Cause hearing when allegations that youths were being denied food surfaced. Most notably, the parties returned to court in 2012 and again in 2013 when counsel for the plaintiffs challenged the continued use of excessive isolation practices, both in special management units and subsequently as part of extended room confinement. Joined by the U.S. Department of Justice, a critically important final agreement came about in May 2014, when the parties agreed to eliminate the use of disciplinary seclusion and most other room confinement and enhance mental health programming and treatment options.

From the time of filing, the case included three separate administrations, seven plaintiffs' lawyers, more than 20 lawyers from DYS and the Ohio Attorney General's office, three federal monitors and thirteen subject matter experts. Judge Marbley presided over the case from start to finish. As noted in the final monitoring report, "His attention to this case, his guidance to the monitoring team and his compassion for system-involved youth have helped mold and strengthen the reforms. Judge Marbley has inspired movement and momentum at times when reform efforts were stalled. He has served the parties as a mediator, a problem-solver and an agent for change." Over two dozen other experts lent

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The World Is Her Playground

By The Honorable David E. Cain

I'm always looking for authenticity and good value. It doesn't have to be wildly expensive to be fun and exciting. – Anne Taylor, on how she plans her excursions

She has been to the North Pole, the South Pole and more than 100 countries in between. Now she will have more time to pursue her world travels, the activity that kept her "charged up" for the pace of heavy Municipal Court dockets the last 24 years. Her new business card simply reads: "Anne Taylor – Explorer."

To get ready for retirement, Taylor and her husband, attorney Steven Smith, sold their house in Upper Arlington, bought a house in Sarasota, Florida because they're "not snow birds," held a retirement kickoff party and printed out a list from the Internet of all the countries in the world.

She checked off the ones she has visited during the past 20 years. The total is 104 – some of those more than once. None were checked just because she was at an airport in that country. "That doesn't count," she said. Taylor's preferred way to visit a country is by doing extensive hiking – getting close to the people, the wildlife and the land.

This month she is already trekking through forests in Japan with her former secretary, Mary Ann Scott, wife of attorney Paul Scott. Later this year, she is going back to Tasmania, probably for a month, because of the "great food, wine, wildlife, hiking and people. It's an island due south of Australia, in the shape of a heart like Ohio," Taylor said.

She begins planning a trip by "just taking a guess." She surfs the Internet for places that look like they would be interesting. "I love the research, figuring out what are the best experiences to have." She takes people from the court system on some of the trips – journeys that "no agency would offer."

"I'm always looking for authenticity and good value. It doesn't have to be wildly expensive to be fun and exciting. Just watch out for street scams. Keep your wits about you," she advises.

One of her favorite places is the Balkans, countries like Macedonia and Croatia. She likes the North Pole – where there is no land, just ice masses that shift around – better than the South Pole because of the polar bears, birds, walruses and hiking opportunities.

Judge Taylor was surprised when I told her I had no desire to visit Asia and she began to recall many happy sojourns there. "I've never been to Taiwan, but I've been to China several times and hiked with the 'special people' in Bhutan and visited Burma and Sri Lanka. I've never been to Vietnam, but I've trekked with hill hikers in Laos [accompanied by Appeals Court Judge Susan Brown and her husband, attorney David Shroyer]."

She went to Borneo to climb Kinabalu, the country's highest mountain at 13,455 feet, and to Singapore for shopping, food and massage. She went to Mongolia for horseback riding and climbing. Then, on the way back, visited Seoul, South Korea, a "beautiful and hugely wealthy" city.

How does she feel about retirement? "I haven't got an adjective yet." For sure, she loved her nearly two-and-a-half decades on the Municipal bench, never aspiring to a higher court. "I'm a 'people's court' judge," she explained.

Taylor was recruited by former Democratic County Chair Fran Ryan in September 1990 to run against Common Pleas Judge David Fais in the November election of that year. She came close. The following year, she handily defeated longtime incumbent Sid Golden for the seat on the Municipal Court.

The normal daily docket on the Municipal bench is 40 to 60 cases per judge. When serving as duty judge handling "initial appearances," the docket is 100 to 170 per day.

"[The volume] keeps you sharp…it's perfect for a multi-tasker," Taylor commented. "I was elected to judge, and I really enjoyed that. I write a lot, working through issues that have been avoided."

"In this job, we've got to get cleansed … have to have our heads cleared … got to recharge. Travel does that for me; the hiking is a particularly good way to do that."

Now, she will step up the pace and just do it for the fun of it. Her husband, who is retiring from a commercial law practice, probably will prefer to stay home as usual.

Taylor has been known throughout her tenure for having a great sense of humor and she displayed it to the very end. On her last day in the "initial appearances" court, she read the two-page boilerplate instructions to the assembled defendants, explaining pleas and other options. Then she added, "Also, no whining. I'm about to retire."

Hon. David E. Cain
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assistance to the parties over the course of the litigation, and across the state, youth advocacy organizations worked to enhance the reforms through promoting effective policies and communications work to complement the litigation effort.

The changes which have taken place within the Department of Youth Services are being recognized not only in Ohio but by advocacy organizations, funders and correctional trade organizations across the country. DYS has much to be proud of for what its staff has accomplished. As the much celebrated end of the case marks a new era for juvenile justice in Ohio, we should not forget the opportunities lost for many youths who spent months and years in DYS facilities without getting help and in too many cases, being harmed. We owe a tribute to those youths who spoke up so valiantly and who were part of making the system better for others.

1. S.H. v. Reed, Case No. 2004-cv-1206 (S.D. of Ohio)
2. http://www.dys.ohio.gov/dnn/AgencyInformation/GeneralInformation/tabid/119/Default.asp
3. See J.P. v. Taft, Case No. 2004-cv-692 (S. D. of Ohio) and J.J. v. Stickrath, Case No. 2007-cv-170 (S.D. of Ohio)
4. U.S. v. Ohio, (Civil Action No. 2:08-cv-475)
5. file:///C:/Users/Kim/Downloads/DYS%20Monthly%20Fact%20Sheet%20January%202016.pdf

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Footnotes continued from page 13

1. Kim Diana Connolly, Elucidating the Elephant: Interdisciplinary Law School Classes, 11 Wash. U. J.L. & Pol'y 11, 13 (2003).
2. The Future of the Law School Curriculum, 69 Tex. B.J. 764, 766 (2006).
3. Michele Mekel, J.D., M.H.A., M.B.A., Putting Theory into Practice: Thoughts from the Trenches on Developing A Doctrinally Integrated Semester-in-Practice Program in Health Law and Policy, 9 Ind. Health L. Rev. 503, 507 (2012).
4. Roy Stuckey, et al., Best Practices For Legal Education: A Vision and a Road Map (CLEA 2007); Charles R. Foster, et al., Educating Lawyers: Preparation for the Profession of Law (Jossey-Bass 2007).
5. See ABA Standard for Approval of Law Schools 303(a)(3).
6. See generally "Employment Rate for New Law School Graduates Rises by More than Two Percentage Points—But Overall Number of Jobs Falls as the Size of the Graduating Class Shrinks," National Association for Law Placement, July 30, 2015 available at http://www.nalp.org/classof2014 (noting that "the number of jobs in small firms has generally been increasing in recent years, and for every job in a large firm taken by a Class of 2014 graduate, about two were taken in a small firm").

A Review of "Sisters in Law:

How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World"

By Janyce C. Katz

Linda Hirshman's "Sisters in Law: How Sandra Day O'Connor and Ruth Bader Ginsburg Went to the Supreme Court and Changed the World" intertwines the lives of two women from very different backgrounds - Sandra Day O'Connor, a Republican from Arizona and Ruth Bader Ginsburg, a Democrat from Brooklyn. However, both women showed self-confidence, intelligence, drive, independence and social and political skills from an early age onward.

Hirshman's examination of their lives and careers reminds us that until recently, women were not permitted into the legal profession, let alone judicial positions. We see so many highly qualified women sitting as judges in Ohio these days. We overlook a worldview that women are not physically able to both work and have children. However, thoughts that women were too delicate for hard work never seem to affect the lives of those on the bottom of the pile, at least until the early 20th century case law started singling out women and children for protective labor laws.

The U.S. Supreme Court held in Bradwell v. Illinois (1873) that women shouldn't practice law. "The paramount destiny and mission of women are to fulfill the noble and benign offices of wife and mother. This is the law of the Creator. And the rules of civil society must be adapted to the general constitution of things, and cannot be based upon exceptional cases." A 1875 Wisconsin Supreme Court case echoed the same thought and denied Lavinia Goodell admission to the state bar. "Nature has tempered woman as little for the juridical conflicts of the court room, as for the physical conflicts of the battle field."

Even when women became lawyers, getting a legal position was difficult. Women who made it through law school were "encouraged" to do probate law, library or secretarial work. Obtaining a litigation position was almost impossible. Both Justice O'Connor and Justice Ginsburg ran into barriers when they looked for their first legal positions.

Justice O'Connor, a member of the Stanford Law School Law Review, graduated third in her class in 1952. She was offered a secretarial job. Instead, she worked without pay for a county attorney to get her foot in the door.

Justice Ginsburg started her law degree at Harvard but transferred to Columbia to remain close to her husband. She was the first woman to be on both the Columbia and the Harvard Law Reviews and tied for first in her graduating class in 1959. Despite a strong recommendation from the dean of Harvard Law School, she was turned her down for a U.S. Supreme Court clerkship position because of her gender.

Ohio can claim to be the first state to elect a woman to its Supreme Court, with former Justice Florence Ellinwood Allen. The second woman, former Justice Alice Robie Resnick, was not elected to the Ohio Supreme Court until 1988.

President Ronald Reagan's appointment of Sandra Day O'Connor in 1981 resulted in the first woman Justice. President Bill Clinton appointed Ruth Bader Ginsburg over a decade later, bringing the number of women on the U.S. Supreme Court throughout its then almost two-century history to two.

Hirshman's book discusses the legal cases that improved the position of women and those that have dismantled some of that improvement in a manner easy to understand. This book is not only important as a legal and personal history of two trail blazers and glass-ceiling breakers but also as a behind-the-scenes view of developing a legal strategy to change laws.

For example, it describes how during her pre-Court years, Ginsburg, then director of the ACLU's Women's Rights Project, carefully picked and then won cases favoring women's rights. Doing so, she set precedents in easier-to-win cases, using those wins for victories on cases factually more difficult. Thurgood Marshall used a similar strategy to advance civil rights issues. Today, the Goldwater Institute and the Institute for Justice follow suit, advancing their goal of removing regulations on businesses by using cases regulating small businesses to establish rulings that would set precedent for the deregulation of industries.

The book's description of the Supreme Court Justices deciding cases and assigning the writing of the opinion, sometimes to dilute the decision's power, should remind all of us that the worldview of the Justices as well as their intellectual credentials matter. That an opinion on a case can be a weak win or a strong victory or a total loss is something to remember as we choose our next president, who may appoint one or more justices to the Court.

A few minor weak points and sloppy editing exist. For example, Phyllis Schafly, the strong opponent of women's rights was not a lawyer in 1971 when she started fighting against the Equal Rights Amendment and for the traditional role of women. She had a Master of Arts in Government and had written books on foreign policy, but she only got her law degree in 1978. Obviously, she was not at home in her kitchen cooking, as she told women they should be doing.

Despite small flaws, this book should be read. It shows the importance of legal strategy, knowledge of judges' opinions and knowledge of history. Plus, it introduces readers to two remarkable women, whose encounters with the barriers facing professional women made them "sisters."

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Lawyers With Artistic License

Kate Graham

By Heather G. Sowald

Imagine the pleasure, after a challenging workday, of arriving home, pouring a glass of wine and sitting down at your childhood upright piano to croon along to your own musical creations. Franklin County Municipal Court's Administrative Magistrate Kate Graham does just that.

Imagine the pleasure, after a challenging workday, of arriving home, pouring a glass of wine and sitting down at your childhood upright piano to croon along to your own musical creations. Franklin County Municipal Court's Administrative Magistrate Kate Graham does just that.

Her father, a Manhattan advertising exec and a talented musician, relaxed similarly. He taught Kate at a young age to play based on chords and their progressions. Kate still doesn't read sheet music well; she uses what her father taught her to improvise and plays mostly by ear. It's not unusual for her to play some old songs with her eyes closed, and she says that is also a good exercise for her memory.

At the age of 16, a Catholic schoolmate fixed her up with, she says, a "too stuffy" college freshman for a double-date at Madison Square Garden. Three years later, she and Galen married. They are the parents of two adult daughters, and they recently celebrated 44 years of marriage. Galen is an academic dean and former president of DeVry University.

Kate followed Galen to Columbus to complete their degrees. Instead of teaching, she became a store detective and eventually entered Capital University's paralegal program. While working for David Bloomfield, she was encouraged to attend law school. After a few years of private practice with Richard Bailey, Kate accepted a position as a magistrate in 1986. Thirty years later, she still finds her work to be rewarding, while recognizing the serious impact her decisions have on people's lives.

Kate cites her proudest professional accomplishment as being a part of a small group of magistrates that founded the Ohio Association of Magistrates in 1989. She served as its president and was a board member for many years. The Ohio Supreme Court has also appointed her to several task forces and its rules advisory committee. Kate is a popular presenter at the Ohio Judicial College.

In 1998, needing to keep music in her life, Kate joined Sweet Adelines, whose members sing four-part harmony a cappella. However, after 10 years competing in intense regional and international singing competitions, Kate found something more exciting and closer to home that she could share with Galen – The Harmony Project.

Kate's whole demeanor lights up as she describes their involvement with this Columbus organization that connects people across cultural and social divides through art, education and service. The membership reflects the diversity of the central Ohio community. Members participate in numerous community service projects while also serving in a 220-person choir. There are no auditions for the choir that performs twice a year to sold-out Ohio Theater crowds. The mission of The Harmony Project is to build a stronger and more inclusive community through service and music. More information on the organization is on their website, www.harmonyproject.com.

To Kate, her association with The Harmony Project fulfills her and shows her a path to follow once she retires. For her, this is full circle, combining her love of music, her love of her husband and her community spirit.

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Civil Jury Trials

FRANKLIN COUNTY COMMON PLEAS COURT

By Monica L. Waller

Verdict: $29,747.66. ($20,747.66 for economic damages, $9,000.00 for non-economic damages, $0 for loss of consortium.) Automobile Accident.

On Sept. 19, 2010, Plaintiff John Delph was driving northbound on Hamilton Road. His wife, Plaintiff Ronata Delph was riding in the passenger seat. As the couple was stopped at the intersection of Hamilton Road and Chilmark Road, their Jeep was struck from behind by Defendant Karlee Smith.

Ronata Delph claimed injury to her neck and an injury to her shoulder which required surgery. Smith disputed that the injuries were related because it was a low impact accident and there was a delay in the onset of symptoms and treatment for the shoulder injury.

Plaintiffs' Expert: Richard Cavender, M.D. (family medicine); Glenn Winnestaffer, M.D. (chiropractic); Robert Nowinski, M.D. (orthopedic surgery). Defendant's Expert: None. Last Settlement Demand: $50,000. Last Settlement Offer: $5,000. Length of Trial: 2 days. Counsel for Plaintiffs: Terry V. Hummel. Counsel for Defendant: Roger H. Willia. Magistrate Ed Skeens. Case Caption: Ronata Delph, et al. v. Karlee R. Smith, Case No. 12CV-11595 (2014).

Verdict: $25,198.14. ($9,698.14 for economic damages, $15,500.00 for non-economic damages.) Automobile Accident.

On Sept. 1, 2010, Plaintiff Jason Manns was traveling southbound on County Road 18 in Trenton Township in Delaware County when Defendant Kurt Jones, who was eastbound on Township Road 22, failed to stop at a stop sign and caused a collision with Manns' vehicle. At the time of the accident, Jones was performing his responsibilities as an employee of Defendant Genesis Audio, Ltd. of Gahanna, Ohio.

Manns claimed to have suffered a concussion, cervical sprain/strain, low-back pain and lacerations that required stitches. Manns went to the emergency room following the accident and then began a course of massage therapy that continued through the end of January of the following year. In the fall of the following year, Manns followed up with his primary physician who sent him for a short course of physical therapy and an MRI and referred him to a neurosurgeon. Manns claimed a permanent disability from lumbar disc bulges at L3-4, L4-5 and L5-S1 and substantial aggravation of lumbar spondylosis.

Jones and his employer stipulated negligence. They also stipulated that Jones was in the course and scope of his employment with Genesis Audio, that Manns sustained a wage loss of $2,185.65 as a result of the accident and that Manns's medical providers accepted $6,827.52 for treatment that Manns claimed was proximately caused by the accident. Defendants disputed the nature and extent of the injuries and that the treatment was related to the accident.

Medical Specials: $6,827.52. Lost Wages: $2,185.65. Plaintiff's Experts: Christian Bonasso, M.D. (neurosurgery). Defendants' Expert: Gerald Steiman, M.D. (neurology). Last Settlement Demand: $18,000.00. Last Settlement Offer: $15,000.00. Length of Trial: 2 days. Counsel for Plaintiff: Matthew T. Wolf, Hausmann-McNally, S.C. and Jonathan R. Stoudt, Rourke & Blumenthal, LLP. Counsel for Defendants: Brian J. Bradigan and Sunny L. Horacek. Magistrate Timothy McCarthy. Case Caption: Jason Manns v. Genesis Audio, Ltd., et al. Case No. 13 CV 008420 (2014).

Defense Verdict. Medical Malpractice.

In 2009 and 2010, Plaintiff John Deucore was receiving treatment from Defendant M. Bradley Smith, M.D. for chronic, intractable right-shoulder pain. Dr. Smith had been prescribing Deucore Vicodin for pain control. However, in January 2010, Dr. Smith became concerned about the amount of Vicodin that Deucore was taking and decided to change his pain control regimen to a Fentanyl transdermal patch.

Deucore applied the first Fentanyl patch on Jan. 21, 2010. The next morning, he awoke feeling ill. He vomited and returned to bed where he stayed for the remainder of the day. Later that day, his fiancee found him semi-conscious. He was transported to MedCentral Hospital in Mansfield and diagnosed with respiratory failure. He later developed aspiration pneumonia and acute renal failure.

Deucore ultimately recovered from his injuries and sued Dr. Smith, claiming that the Fentanyl patch Dr. Smith prescribed was three times the recommended dosage. Dr. Smith argued that the dosage prescribed was appropriate given the clinical circumstances. Dr. Smith also asserted that Deucore's respiratory failure was due to an underlying respiratory disease and that his renal failure was not induced by the Fentanyl.

Medical Specials: $18,589.80 (reduced to $16,885.57). Lost Wages: None. Plaintiff's Expert: Roy Jacobson, M.D. (family medicine). Defendant's Experts: Michael Yaffe, M.D. (family medicine) and Allen Nichol, Pharm.D. (pharmacology). Last Settlement Demand: $145,000.00. Last Settlement Offer: None. Length of Trial: 5 days. Plaintiff's Counsel: Lawrence D. Abramson. Defendant's Counsel: Kevin W. Popham. Visiting Judge Nodine Miller. Case Caption: John A. Deucore v. M. Bradley Smith, M.D., et al. Case No. 11CVA07-8410 (2014).

Defense Verdict. Medical Malpractice.

On Nov. 4, 2010, 69-year-old Carl Reynolds underwent a revision of a left total-knee replacement at Grady Memorial Hospital. Hospitalist Kombian Gbaruk, M.D. was consulted to manage Reynolds' medical conditions post-operatively. Dr. Gbaruk saw him the following day and noted that he had experienced some shortness of breath and dizziness when he attempted to ambulate. He ordered testing and breathing treatments. After reviewing the results of the testing and re-evaluating Reynolds, Dr. Gbaruk cleared Reynolds to resume physical therapy.

On the morning of Nov. 6, 2010, Reynolds again became dizzy and lightheaded during therapy; he fell to his hands and knees and became pulseless and unresponsive. Efforts to resuscitate him were unsuccessful. An autopsy was done which identified massive pulmonary thromboembolus as the cause of death.

The administrator of Reynolds' estate sued Dr. Gbaruk and the hospital for medical malpractice, claiming that they failed to properly assess, diagnose and treat Reynolds' pulmonary embolism. Dr. Gbaruk argued that deep vein thrombosis and pulmonary embolism were known risks of the procedure and that Dr. Gbaruk properly evaluated Reynolds.

Plaintiff's Experts: Franklin A. Michota, Jr., M.D. (hospital medicine); Dan James Fintel, M.D. (cardiovascular disease); Denise Kresevic, R.N., Ph.D. (nursing) and David W. Boyd, Ph.D. (economics). Defendants' Experts: Martin J. Tobin, M.D. (pulmonology); Jeffrey H. Barsuk, M.D. (hospital medicine); Steven Michael Belknap, M.D. (clinical pharmacology); Philip Weisfelder, M.D. (hospital medicine); Ronald Sacher, M.D. (hematology/pathology); Gregory Moneta, M.D. (vascular surgery) and Shirley Alsup, RN (nursing). There were no meaningful settlement negotiations. Length of Trial: 9 days. Counsel for Plaintiff: Timothy L. Van Eman. Counsel for Defendant Gbaruk: Theodore M. Munsell. Counsel for Grady Memorial Hospital and OhioHealth: Bobbie S. Sprader. Judge Guy Reece. Case Caption: Diane Reynolds, et al. v. Kombian Gbaruk, M.D., et al. Case No. 11 CVA-09-11196 (2014).

Defense Verdict. Breach of Contract.

In 2004, Defendant Ronald Alford created the Ronald B. Alford Charitable Remainder Unitrust. A charitable remainder unitrust is an irrevocable trust created in compliance with a provision in the U.S. tax code. The tax code requires that the trustee distribute a fixed percentage of the trust assets at least annually, the unitrust amount, and distribute the remaining corpus of the trust to charity upon the expiration of the trust.

Alford fixed the unitrust amount of the Ronald B. Alford Charitable Remainder Unitrust, referred to as "the trust," at 6 percent, which was to be paid to Alford during his lifetime and thereafter to his spouse, Tracy Alford during her lifetime. The trust was to expire after both Ronald and Tracy had died with the remainder to be distributed to the John and Mary Alford Foundation. Ronald named himself the trustee of the trust. By the trust terms, he was obligated to exercise his management powers in a fiduciary capacity and prudently invest the assets.

In 2008, Ronald and Tracy Alford were divorced. They entered into an agreed divorce decree, in which Tracy agreed to waive and disclaim any beneficial interest in all accounts. However, the decree also provided that Tracy was entitled to 75 percent of the unitrust amount for her lifetime. Her allocation of the unitrust amount was made in lieu of an award of spousal support.

Over the following years, the 75 percent distribution paid to Tracy fell below the amount that Ronald represented that she would receive when the divorce decree was finalized. Tracey alleged that Ronald made poor investment decisions that depleted the trust corpus and consequently reduced her distribution. She sued Ronald for breach of fiduciary duty.

Ronald argued that Tracy was no longer a beneficiary of the trust after the couple was divorced and therefore he did not owe her a fiduciary duty. He also claimed that he had made sound investment decisions and that the poor economy was to blame for the depletion of the trust assets. The court granted partial summary judgment to plaintiff and found that Tracy continued to be a beneficiary of the trust after the divorce. At trial, the jury concluded that Ronald did not breach his fiduciary duty.

Claimed Damages: $1,614,884.99. Plaintiff's Expert: Ross Tulman (trade investment analysis). Defendant's Expert: William T. Grove (trade investment analysis). No settlement negotiation information was available. Length of Trial: 4 days. Counsel for Plaintiff: Michael R. Szolosi Sr. and Michael R. Szolosi Jr. Counsel for Defendants: Barry H. Wolinetz, Dennis E. Horvath and Kelly M. Wick. Judge Charles Schneider. Case Caption: Tracy W. Alford v. Ronald B. Alford, et al. Case No. 13 CV 10179 (2014).

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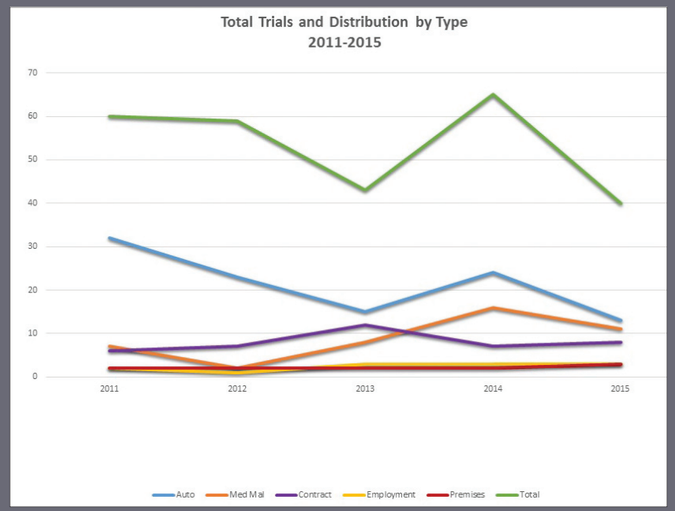
2015 Year in Review

By Monica L. Waller

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 2015:

Juries rendered verdicts on 40 civil actions in 2015. By comparison, there were 65 civil jury trials in 2014, 43 civil jury trials in 2013, 59 in 2012 and 60 in 2011.



AUTO CASES	2015	2014	2013	2012	2011
Number of Jury Trials	13	24	15	23	33
Percentage of All Civil Trials	33%	37%	35%	39%	55%
Percentage Plaintiff's Verdicts	78%	75%	60%	83%	52%
Range	$1,655-$85,000	$1,100-$140,000	$4,500-$230,000	$3,700-$140,000	$1,500-$53,000
Mean	$29,130	$26,146	$47,957	$36,353	$14,046
Median	$16,734	$12,415	$15,143	$12,000	$8,513

Auto Accident Jury Trials

Thirteen of the 40 jury trials involved automobile accidents.

Three of the 13 auto accident trials ended in defense verdicts.

The damages awarded to plaintiffs ranged from $1,656 to $86,000 with an average of $29,129.66 and mean of $16,734.31.

A breakdown of economic and non-economic damages was available for all nine verdicts. The non-economic damage awards ranged from $250 to $20,000 and 15 to 79 percent of the total verdict. Most non-economic damages were 30 to 40 percent of the total verdict.

Other Civil Jury Trials

Eight cases involving breach of contract claims and other business disputes were tried. This is up slightly from seven jury trials on the same type of case in 2014.

There were three employment cases tried. All three resulted in verdicts for employers.

Three premises liability cases were tried in 2015, two of which resulted in defense verdicts.

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

Med Mal Cases	2015	2014	2013	2012	2011
Number of Jury Trials	11	16	8	3	7
Percentage of All Civil Trials	28%	25%	19%	5%	13%
Percentage of Plaintiff's Verdicts	9%	19%	62%	0%	0%

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