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Spring 2014

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Spring 2014

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Lunch with My Father

Lessons for Good Lawyering

By Mark Petrucci

When I received my license in 1990, I started as an associate in my father's law practice. My father was licensed in 1957 and never had a partner. Over the years he was asked several times to join up, but he never saw himself in a firm – small, medium, or large. And he did not make me his partner either! Though we were never Petrucci & Petrucci, I understood his decision. Although he split the money 50/50, he never wanted a formal partner and wasn't going to change.

During a down moment at court one day I overheard someone ask him why he became a lawyer. His response was simple and to the point. Three valid reasons: food, clothing and shelter.

The answer did not surprise me. By that time in my life, my father had already admitted to me that he had never been drawn to the law. He said that when he got out of the Marines he ended up going to law school because his younger brother was already admitted. Not wanting to waste his GI benefits, he joined his brother. And thirty years later he was still at it – practicing law for food, clothing and shelter. Not a traditional reason, but an honest one.

My father's hope was that after law school he would be employed by a corporation and after 30 years, retire. But it never happened. He ended up working with a solo practitioner in Columbus in an area of law that was not very interesting to him. It turns out his new employer was not the best role model either – so he left and opened up his own practice. He had a new wife and a child on the way, all within the first six months after getting his license. In his words, he had to knuckle down and get to work. The story goes that when he paid the hospital bill for my brother's birth, he was unsure if he had enough money in his checking account to cover it. (I have always told my brother that it was unfortunate the check cleared.)

To rectify his circumstances, he took on all the work he could find. By the time he started feeling good about his economic situation, he realized that he had become a civil trial lawyer. Not by choice – by necessity. He was trapped. The corporate jobs he had coveted after law school now paid less than he was making. The need to support his new family made any change too risky. This isn't a story he told many people, but I am free to tell it now because my father passed in 2007.

Those who knew my father in 1957 were not surprised that he became a truly good trial attorney with a reputation for professionalism. But I think they would have been surprised to know he felt trapped. He was going to do the right thing for his family and make the most of it. By the time I was cognizant of my father's profession, his nickname was already Dudley Do Right.

Like my father, I was never drawn to the law. Soon after I was born my mother returned to work. I was a latchkey kid before the term existed! Before I graduated from high school, my mother had obtain a masters and then her PhD. By the time I went to college my mom was a "doctor" and my dad was a lawyer. Cool. My parents could provide anything we kids could want. Instead, they mainly choose what we needed. Growing up on the north end of Columbus did little to inspire my need to address social issues or change the world. I had a safe insulated suburban life, and suburbia was fine with me.

When I was about to graduate from college I realized I did not like the idea of working for a living. (Working looked hard, and I had the student thing down pat.) With little time to decide what to do, I looked into graduate studies as a way to postpone growing up and getting a job. I could have taken my mother's path and gone into a PhD program, or law school to follow my father. So, why did I become a lawyer over a professor? The choice was simple – food clothing and shelter. Law school was three years; PhD was four or more. My father was nearing his retirement, and he still maintained a thriving private practice. A PhD would require charting my own course. Being inherently lazy, law school made the most sense to me.

When I told my father of my plans, he tried to talk me out of it. After 30 successful years in the law, he still felt trapped and wanted something different for me. Clearly, I did not listen to him.

Throughout law school I worked in my father's practice. He was a creature of habit and never worked through lunch. We would stop around 11:30 am. – to beat the rush. The two attorneys who shared office space were always invited to join us and often did. Those lunches were priceless. My father would be most open about the events of the day – including what he thought about being a lawyer. It was clear that he believed strongly that the practice of law had two main elements. The first, that the law was a true profession in the traditional sense of the word. Even though he was not called to the law, he understood that it was a "calling." Being a lawyer was more than a job. The second element: it was a business that provided you and your family – you got it – food, clothing and shelter. You could not forget either or you would be in a world of trouble.

Why have I told you all of this? It's simple really. Those lunches with my dad were my own daily committee meetings. When I became more and more involved in the Columbus Bar, I noted that, as an institution, it was a lot like my father. It understood that being a lawyer was both a business and a profession. The Bar has consistently provided programs and networking opportunities that enhance professionalism. Furthermore, the Bar has not missed the fact that, for more and more of us, the practice of law has not provided the rewards we were looking for. Some lawyers may find themselves dissatisfied with the lifestyle. Trapped you might say. The Columbus Bar can help.

If you are not as fortunate as I was to have a parent who understood the profession, I strongly suggest that you turn to the Bar for the same great advice. There is something here for everyone. Your stress can be addressed. Your need to increase your business and your ability to maintain your professionalism can all be enhanced when you take the time to be involved.

Make the Columbus Bar your professional *alma mater*!

Mark Petrucci,
President, Columbus Bar

Let's Talk It Over

The Mediator's Tool is Conversation

By Edward M. Krauss

How can you provide the most valuable assistance to your client when a mediation is going to take place? The best way is to shift your thinking and preparation from a litigation model to mediation.

Remember – mediation is not arbitration, litigation, discovery, or a deposition. Mediation is a conversation, a dialog facilitated by a neutral third party in a structure of organized problem solving. Information about privilege and confidentiality, and the rules covering mediation, are found in the Uniform Mediation Act - ORC Sections 27710.01-2710.10. If you have not read the UMA I strongly recommend you do so before representing your client in mediation.

The fact that this process is a conversation allows for freedom in exploring a wide range of possible solutions. The mediator will not offer legal or financial advice, will not say who might be right or wrong. On occasion, depending on the matter at hand, the mediator may – with the clear permission of the parties – offer a solution for consideration. But the goal is to have the parties design their own resolution, accept it and own it.

"..... the point of a mediation is not to prove something to a third party such as a judge, but rather to agree on what might be a solution. Litigation is about the past: Who is at fault? Mediation is about the future: What is a mutually acceptable solution going forward?"

In situations where one side may be *pro se* (landlord-tenant is a common example), or in certain domestic disputes such as post-decree parenting agreements, the mediator may offer suggestions for consideration based on experience with similar situations: "Here's a way of handling this situation that has worked for other families." In business, financial or employment disputes – contract fulfillment, debt settlement, investments, discipline, termination, Equal Employment Opportunity – it would be common for the mediator to make no suggestions, but to ask clarifying questions of both sides and to offer summaries for consideration so that the attorneys and clients can begin to formulate resolutions.

As a mediator, I've had many situations where attorneys brought briefcases and boxes full of documents to the mediation, only to find that the vast majority of that weight could well have been left in the office. The mediation table is not a court of law, evidence is not submitted. For example, if a maintenance contract was (in the opinion of the recipient) not properly fulfilled, a copy of the contract would be useful. But copies of the emails that went back and forth over several months are not useful. Why? Because the point of a mediation is not to prove something to a third party such as a judge, but rather to agree on what might be a solution. Litigation is about the past: Who is at fault? Mediation is about the future: What is a mutually acceptable solution going forward?

What happens in a typical mediation? The mediator starts by talking about the process; what it is and how it will proceed. Points of emphasis, as mentioned above, are that this is not a legal process and the goal is to find an agreement all parties can accept. Documents are signed, including an Agreement To Mediate that refers to or uses language similar to that found in the UMA and an agreement on who pays for the mediation service. If the parties are paying it is usual for the split to be equal – 50/50 or 33/33/33 – but there is no rule covering payment, and on occasion one party pays the full cost.

Before beginning, an explanation of caucus is provided. A caucus is an opportunity for parties to speak privately. This may be attorney and client in a separate room for some minutes, or it may (if desired by the parties) include the mediator. In the latter case the mediator can act as a devil's advocate, a person providing a reality check. Note: Some mediators separate the parties soon after the introduction and shuttle between rooms. My style, common among mediators, is to have the parties stay at the table (as long as it is effective) and share their viewpoints, their concerns, their potential solutions.

So what can one, as the attorney, do to best serve a client before and during a mediation?

First, remember that the purpose of the time together is to, if possible, find a resolution that will close the matter then and there. This is critical in your preparation and in your pre-mediation conversations with your client. Mediation is voluntary. Thus, there is not a winner and a loser, because no one will voluntarily agree to lose. So what does a mediated settlement sound like? People say "I can accept that. It isn't everything I wanted, but it is resolved and I can get on with my life, with running my business, with enjoying my family and friends." By choosing mediation over litigation people save time, energy, stomach acid.

Second, as described above, bring what documents you want to show *the other parties* to make sure there is a mutual understanding. Remember that the parties are thoroughly familiar with the case; only documents which can clarify a point of misunderstanding are of value.

I've held numerous mediations where the parties started off unable to look at each other, only to stand and shake hands three hours later. You can help your client reach that satisfactory outcome.

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Edward M. Krauss

FLAT FEE / OFTEN FLAT WRONG

By Bruce Campbell

Fair warning: I am in one of those increasingly infrequent moods in which I feel moved to say something serious about this professional ethics thing I am supposed to promote. Sorry, but I have a termite scurrying around in my mental underwear, and I have to extricate it by inflicting a semi-solemn rant on you.[1]

There is a dark puissance insinuating itself through Lawyerland leaving dribbles of tacky slime behind in the form of distressed and disillusioned clients. While this "Force" has a benign side, useful if applied properly, it is being misused in all too many "dusty purlieus of the law."[2]

It all starts – and often ends unhappily for a lawyer – with the Ohio Rules of Professional Conduct. They control, among other things, the lawyer/client relationship and the means by which a lawyer can obtain and retain that much-maligned substance, filthy lucre. Please forgive me for a brief run through of a few of those precepts on the way to making a point or three.

Prof.Cond. R. 1.2(c) says that a lawyer "may limit the scope of a new or existing representation if the limitation is reasonable under the circumstances and communicated to the client, preferably in writing." [3]

Prof.Cond. R. 1.5(b) commands that, "The nature and scope of the representation and the basis or rate of the fee and expenses for which the client will be responsible shall be communicated to the client, preferably in writing, before or within a reasonable time after commencing the representation, unless the lawyer will charge a client whom the lawyer has regularly represented on the same basis as previously charged. Any change in the basis or rate of the fee or expenses is subject to division (a) of this rule and shall promptly be communicated to the client, preferably in writing."

Campbell Quibble A: The P-Word

Any lawyer knows, there is bus-size sinkhole between "Lawyer Speak" and "Client Hear." The lawyer says, "I will take your case through the trial court for this many beans, but I won't do an appeal unless you cough up more." Client hears, "For this amount, and not a nickel more, I will take your case all the way to the International Court of Justice if necessary."

In my puny opinion, these Rules stick their talons in their own flesh by including the limp qualifier "preferably." The Supreme Court could backfill the communication chasm and advance the cause of understanding by erasing this toothless word "preferably." My mom never told me she would "prefer" that I eat spinach; there was no other option on the table.

No doubt, many lawyers would rail against being obligated to commit their vaporous "understandings" with clients to corporeal ink. Just as surely, a substantial sub-set of the objectors would be the very lawyers most likely to have future dates with the disciplinary system stemming from chronic, Cool-Hand-Luke-like, "failures to communicate." An unwritten flat fee agreement is an actor waiting in the wings ready to rush on-stage and pummel the protagonist.

Campbell Quibble B: The Flat Fee Flimflam

Prof.Cond. R. 1.5(d) says "A lawyer shall not enter into an arrangement for, charge, or collect any of the following: . . . (3) a fee denominated as 'earned upon receipt,' 'nonrefundable,' or in any similar terms, unless the client is simultaneously advised in writing that if the lawyer does not complete the representation for any reason, the client may be entitled to a refund of all or part of the fee based upon the value of the representation pursuant to division (a) of this rule." By interpretation, this includes that nebulous creature called a "flat fee."

Kudos to the Supreme Court; here, we have an unconditional writing requirement. The client must get a document saying "If I don't do what I told you I would, you might get some money back." So, what is the problem? Simply this: the Rule 1.5(d) just mandates putting a refund notice into print; it does not require a documentation of the "scope of representation" and the "basis or rate of the fee and expenses." How can there be an objective determination of what parts of the fee have/have not been earned and when if all we have are the predictably-conflicting recollections of lawyer and client?

It is an oft-repeated saga. Client submits a grievance saying "Lawyer X didn't do jack and won't return my life savings that I paid as a 'flat fee.'" Lawyer X says, "I did all these things and spent untold hours for this ingrate." Client retorts, "Lawyer X may have spent some time but didn't produce squat benefits; I'm broke and right where I started." Without words on 8 1⁄2 x 11, and without even a rudimentary accounting of the effort made and results achieved, how can it be divined who should get what – or, just as important, whether the lawyer has acted ethically? One thing is clear; the onus is on the lawyer who, unlike the client, has a set of rules to follow.

Campbell Quibble C: Frittered Funds

Here is where concept meets reality. Where does the flat fee repose while the lawyering it is supposed to be buying is still going on? The "answer" is muddy at best.

In many jurisdictions with essentially the same rules we have, the courts have said the flat fee must be deposited, like any as-yet-unearned fee, in a trust account and withdrawn as the work is actually accomplished. The District of Columbia Court of Appeals put it this way "The corollary to the rule that a flat fee is an advance on unearned fees is that the fee must be held as client funds in a client's trust or escrow account until they are earned by the lawyer's performance of legal services. . . . [W]e recognize that there are competing interests: If the funds are entrusted until earned, the attorney bears the inconvenience and in some, cases, genuine hardship of a delay in enjoying payment. If the funds are not entrusted until earned, the client suffers the risk that, if the funds are spent or attached by the lawyer's creditors, the client may obtain neither the agreed upon services nor the money in the form of a refund. . . . [W]e conclude that the client's interest in protecting the funds overrides that of the lawyer's in immediate access to them, and that the public is ultimately better served by requiring that the lawyer keep fees in a trust or escrow account."[4]

Ohio seems to have taken a different view. The Supreme Court's Board of Commissioners on Grievances and Discipline issued an Advisory Opinion #96-4 that holds ". . . a flat fee paid in advance of representation [in a criminal case] may be deposited in the lawyer's business account upon receipt pursuant to the agreement between the lawyer and client that the flat fee will be paid in advance of the representation . . . However, deposit into a business account does not mean that the fee is nonrefundable." Although this Opinion was rendered based upon the old Code of Professional Responsibility, it remains in place under the Rules of Professional Conduct.

It is wildly fanciful to think that an unsophisticated client (especially one facing jail) will process a hurried verbal exchange sufficiently to understand terms of representation – the scope, the cost, the type of fee arrangement, and the potential for refund – being proposed orally by a lawyer. Given also that the arrangement is often presented on a "take it or leave it" basis, it is all the more unlikely that there will be informed buy-in on the part of the client.

Much like a contingent fee, a flat fee is akin to a bet. The lawyer's gamble is that the work can be done in a relatively short time and will yield a higher flat fee than an hourly rate for the equivalent time would generate. The client's bet (whether conscious or, more likely, not) is that, if the case turns out to be more complicated than the lawyer contemplated, fees will be capped at the agreed level. Since the lawyer knows the odds and understands the house rules while the client may not know ding from dong, this can be a dice-loaded game. The lawyer should assume the burden of making the deal clear in the first instance and stick to the bet – even if it turns sour (i.e. less lucrative than hoped).

Too often, the disciplinary system receives responses to grievance from lawyers who say they did the whole job when, by any reasonable measure, they have not; who claim that they do not have money to refund fees to the client; or, who unilaterally change the rules mid-game to suit their own convenience. The Supreme Court has regularly had to address these issues in disciplinary cases.

This is the age of transparency for the benefit of consumers, is it not? The Rules should require attorneys (if common sense is insufficient) to have comprehensive written contracts and should disallow keeping client money in the lawyer's jeans before it is earned. The P-Word should be surgically removed from Rules 1.2(c) and 1.5(b). Opinion 96-4 should be revised to require placement of all unearned fees in trust – be they flat, round or hexagonal. Whether or not this happens, lawyers using flat fees should do the math: Is the time and effort required to craft a defensible contract greater or lesser than having to deal with a disciplinary grievance?

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1. The opinions expressed should be attributed only to me – not the CBA; not the Ethics Committee thereof; and, not any other carbon-based life form, living or dead.
2. Tennyson, "In Memoriam."
3. Italicized words in the Rules are "defined terms" as set out in Prof. Cond. R.1.1 (albeit, by resort to tautology in many cases).
4. In re Mance, D.C.No. 06-BG-890, 9/24/09

The case below was referred to the law firm of Clark, Perdue & List Co, LPA, by the CBA Lawyer Referral Service. This was a particularly difficult case in which the special needs of a child were able to be met. The Columbus Bar Association is grateful to all of its LRS panel members who provide hundreds of hours of service to central Ohio consumers every year, answering their questions, pointing them in the right direction and when appropriate, providing representation.

On the evening in February, 2011, a young woman was driving to her sister's home in a Columbus apartment complex. In her car were the driver's 4-year-old daughter and her 1-year-old nephew.

More than a dozen apartment buildings were situated around a deep lake, that was at the center of the apartment community. The apartments were built very close to the water's edge.

The night in question was very dark, and the driver of the car was intoxicated with a BAC twice the legal limit. She was talking on her cell phone as she drove through the apartment complex looking for her sister's apartment.

The young female driver made a wrong turn into the parking lot of the business office for the apartment complex. The parking lot could reasonably have been mistaken for a road. The driver proceeded through the parking end eventually drove over a shallow curb, down a short but steep embankment, and into the lake. The car quickly became fully submerged in the cold water.

At the point where the vehicle left the paved surface, there were no warning signs, and there were no barriers to prevent a vehicle from going down the embankment and into the deep lake. Additionally, a light on the adjacent business office was not working, and it was established that the ambient light at this location was poor.

The driver of the vehicle drowned, as did her daughter. Although under water for approximately 45 minutes, the 1-year-old boy survived. As a result, he suffered profound and permanent anoxic brain damage.

We brought a claim against the apartment complex on behalf of the surviving child. Because of the substantial risk to both parties, the claim was mediated. Ultimately, a substantial confidential settlement was obtained on behalf of the minor child. The proceeds were placed in a special needs trust to provide for the care and comfort of the child.

Selling Tesla

Reviewing the legal obstacles and setting up shop in Ohio

By Nichole Reiss

Everyone remembers their first car. No matter if it was shiny and new, or more rust than metal; it was a tangible symbol of newly won freedom. Over time, some folks lose that feeling and view cars as a way to get from point A to point B – just another transportation option. The lucky among us are able to hold onto those emotions and continue to see the car for something more than a collection of parts. An automobile can be a combination of beauty and power that, when done correctly, equals a work of art. Millions of children with posters of cars on their bedroom walls attest to it. (Mine was the Ford GT-40.)

Since the first engine was put above four wheels, that beauty and power was thought to reach its pinnacle in cars with an internal combustion engine. No other power source was thought able create the same level of force and precision in the same space. Hybrid or electric cars were fine for folks just looking for a way to get around town, but it was difficult to imagine any new power system competing with the likes of Porsche, Ferrari or Maserati. Then along came Tesla. Suddenly, an electric car had design, had grace, had that something that makes your head turn as it passes by on the street. But this was not just a beauty – with a 0-60 time of around 4 seconds, it had the heart of a beast as well. The big boys now had a legitimate competitor. Tesla has not been without its own issues, most noticeably fires caused by the lithium ion battery cells – even while the car is unplugged. But Tesla had shown there was a viable pathway to building a premium electric car, paving the way for BMW's i3 and i8, the Mercedes B Class Electric, and the Cadillac ELR, all debuting this year.

Photo Courtesy of Tesla Motors

But Tesla doesn't limit its innovations to designing and building cars. Soon after his cars began to be sold, Tesla's founder, Elon Musk, said he wanted to create a new way to *sell* cars, too.

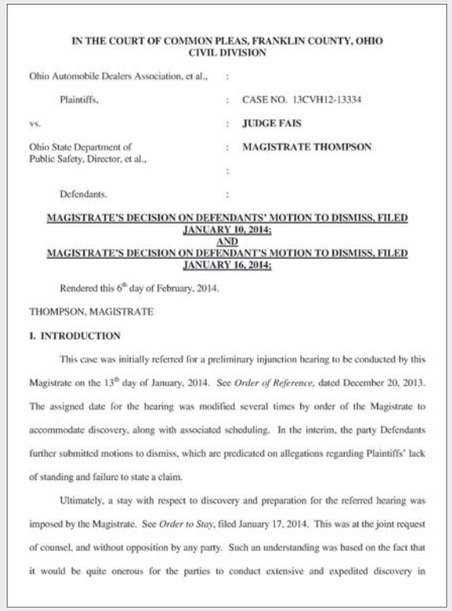
Traditionally, cars are sold via the dealership model. A manufacturer contracts with independent dealerships around the country and world for the retail sale of their products. This method allows dealerships to pick and choose the manufacturers and product lines that will best appeal to their location and hit multiple price points. For manufacturers, the appeal of this model comes from allowing them to carry far less risk than they would by engaging in direct sales. And for customers, this gives them access to a sales force in their community who may know them personally and ideally will steer the customer towards the appropriate purchase. While each state developed its own regulatory structure for car dealerships, most states chose to incentivize the dealership model over straight manufacturer-to-customer sales.

From the outset, Tesla determined that manufacturer-to-customer sales made more business sense. In 2013, Tesla sold about 22,000 cars, a far cry from the 2.78 million sold by General Motors, or 1.52 million sold by Honda. With such a small number spread across the country, Tesla preferred to maintain control of the selling process for now. Mr. Musk has stated publicly that he is open to a dealership model at some point when sales increase, acknowledging that dealerships do promote competition and keep prices down. Tesla sees little value in partnering with dealerships currently, believing that most dealers would continue to favor traditional internal combustiaon vehicles over engaging in the lengthy education process that accompanies selling an electric vehicle.

Under the Tesla model, the company opens a "showroom" in an area of the country where they see potential. The showroom includes models and information for potential customers to peruse. Unlike a traditional dealership, there is no stock on site that a customer could buy and drive away with that day. The hope is that after this experience, potential customers go online either at the store or later at home and order their specific car to be delivered in the future. Some states, including Texas, prohibit these types of direct manufacturer to customer sales, but in others this is a gray area. Tesla has been to court in several states to litigate the matter, and now that question has come to Ohio.

In early 2013, Tesla Motor Company applied for a motor vehicle dealer license from the Ohio BMV. The license was granted in March and Tesla then opened a showroom at the Easton Town Shopping Center. The Ohio Automobile Dealers Association, believing the store was violating several Ohio laws, began to oppose the store on both the legislative and litigation front. An effort began in the Ohio Senate to insert language into the state operating budget bill that would prohibit a manufacturer from selling cars directly to consumers in Ohio. Ultimately, the effort to insert the language into the budget bill was unsuccessful. A similar effort to insert the same language into a bill on roadway maintenance also failed in December, 2013. When it appeared legislative efforts had stalled, the OADA, along with several central Ohio dealerships filed a lawsuit in Franklin County alleging Tesla's Easton storeroom violated current Ohio law. Named as defendants were Tesla, the Ohio Bureau of Motor Vehicles, and the Ohio Department of Public Safety. The BMV and ODPS are the state agencies in charge of issuing auto dealership licenses.

The heart of OADA's claim was that in order to be granted a dealership license the location must have a contract, specifically a franchise agreement executed in writing, with the manufacturer. The OADA argued that Tesla must conform to the same requirements as other dealerships around central Ohio. Ohio law requires each person applying for a motor dealership license to provide a copy of the contract, agreement or understanding with the manufacturer of the vehicles they will be selling. The law does not explicitly require that this item be a franchise agreement, nor "prohibit a single entity from acting as both a manufacturer and dealer."



IN THE COURT OF COMMON PLEAS, FRANKLIN COUNTY, OHIO
CIVIL DIVISION

Ohio Automobile Dealers Association, et al., : Plaintiffs, : CASE NO. 13CVH12-13334
vs. : JUDGE FAIS
Ohio State Department of Public Safety, Director, et al., : MAGISTRATE THOMPSON
Defendants. :

MAGISTRATE'S DECISION ON DEFENDANTS' MOTION TO DISMISS, FILED JANUARY 10, 2014;
AND
MAGISTRATE'S DECISION ON DEFENDANT'S MOTION TO DISMISS, FILED JANUARY 16, 2014;

Rendered this 6th day of February, 2014.

THOMPSON, MAGISTRATE

I. INTRODUCTION

This case was initially referred for a preliminary injunction hearing to be conducted by this Magistrate on the 13th day of January, 2014. See *Order of Reference*, dated December 20, 2013. The assigned date for the hearing was modified several times by order of the Magistrate to accommodate discovery, along with associated scheduling. In the interim, the party Defendants further submitted motions to dismiss, which are predicated on allegations regarding Plaintiffs' lack of standing and failure to state a claim.

Ultimately, a stay with respect to discovery and preparation for the referred hearing was imposed by the Magistrate. See *Order to Stay*, filed January 17, 2014. This was at the joint request of counsel, and without opposition by any party. Such an understanding was based on the fact that it would be quite onerous for the parties to conduct extensive and expedited discovery in

In his decision granting the defendants' motion to dismiss, Magistrate Thompson found that none of the five dealerships, nor the OADA, had standing in the case. He reasoned that the process for granting a motor dealer's license includes no administrative redress for third parties. Applicants themselves have the right to an appeal, but other dealers and the general public do not have the right to interject. Crucially, this means that these third parties have no standing to ask for redress from the legal system – no harm has accrued. The plaintiffs asserted they also had standing under the "public rights" exception, reserved for when the issues are of great importance to the public. It is a standard few cases are able to reach, and did not apply in this case.

The OADA complaint alleged that Tesla's license would "threaten irreparable injury" and afford Tesla an "unfair competitive edge." But Magistrate Thompson found those claims and others of that ilk were no different that the harm that would occur from issuing another dealer a routine license. Because there was no explicit prohibition in the law against a manufacturer receiving a dealer license, this situation is no different from John Doe receiving a license to open a dealership selling Chevy cars. The plaintiffs argued that allowing one manufacturer, even a niche one, to receive a license opens the door for other manufacturers to also apply for a license. Magistrate Thompson found this long term argument to be an abstract injury, and not one ripe for remedy in a court. It is the "very definition of hypothetical, speculative and remote injuries that are not enough for standing under Ohio law." He went on to say, "The proper vehicle to impose the restrictions that Plantiffs seek is to lobby the General Assembly, as this is a legislative matter." In late February the Plaintiff's filed an objection to the Magistrate's decision. That objection is still pending.

In the meantime, the battle returns to the halls of the Ohio Statehouse. Senate Bill 260 was introduced by Senator Tom Patton (R-Strongsville) in December of 2013. In February, the Senate Finance committee held several hearings on the bill. OADA Vice President of Government Relations Joe Cannon testified on behalf of the OADA and its members in support of this bill, stressing that dealers are not opposed to innovation, but that this exception to decades of policy was cause for alarm. The OADA Mr. Cannon pointed to the strong economic impact of dealerships, that employ over 50,000 people and remit upwards of $1 billion in sales tax to the state each year. He stated that these investments were made on the belief that manufacturers were barred from selling directly in the state.

During the next hearing on SB 260, Tesla's Vice President of regulatory affairs, James Chen, testified in opposition to the bill, claiming this legislation would encumber the company's ability to sell cars in Ohio. An Ohio manufacturer who supplies Tesla with aluminum and several local owners also testified in opposition to the bill.

As in the other states where Tesla and dealers are engaged in similar battles, it appears there will be no quick resolution in Ohio. But investors seem confident in Tesla's business model sending the stock high after the recent fourth quarter report released by the company announced better than expected sales in 2013 and increased 2014 projections by 5% over 2013 numbers.

Since demand for customized projects has boomed, and new manufacturing processes make it easier than ever to order everything from coffee to clothes to kitchen cabinets exactly to the customers' specifications – is it really so difficult to believe that cars won't be far behind? Tesla makes ordering a car as easy as ordering a pizza, and based on growth there is certainly a market. But will this new business model appeal to the big auto makers who see much of their profit derived from economies of scale? Or will it remain a tool for niche products? Those of us with an interest in cars, either professional or personally, will be watching closely to see what happens next.

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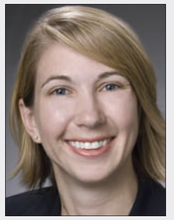

"Friending" the Court
Using amicus advocacy before the Ohio Supreme Court

By Dennis D. Hirsch

The term "amicus curiae" translates literally to "friend of the court." The ancient Romans used this Latin term to refer to those who, while themselves not involved in the dispute before the court, nonetheless provided it with legal information.[2] The first amicus briefs in England, which date from the 17th Century, helped judges to avoid errors.[3] In 1823, Henry Clay filed the first amicus brief before the U.S. Supreme Court when the Court asked for his views on a Commerce Clause case.[4] In these early instances the term amicus curiae referred to a disinterested party who filed a brief in order to assist the court. This history, and the term "friend of the court," convince some that amici curiae are detached, neutral participants who seek to help the court rather than to further their own interests.

That is not the case. In the years since Clay's brief, amicus parties have become highly strategic advocates who use their briefs to achieve particular interests. Corporations, trade associations, non-profit organizations, public interest advocacy groups and others have employed the amicus brief to put their mark on the law. By the late 1990s, amicus parties were filing briefs in over 90 percent of U.S. Supreme Court cases.[5] In a 2006 survey, many state supreme court justices reported that amicus briefs influenced their decisions.[6] This article describes the principal strategic functions that amicus briefs can fulfill. Where possible, it illustrates them with examples drawn from Ohio Supreme Court decisions.

Amicus participation can begin at the very commencement of an Ohio Supreme Court case. Amicus parties are well-positioned to influence the Court's decision on whether to hear a given appeal. In exercising discretionary review, the Court looks to whether "the case involves a question of public or great general interest."[7] Where a number of amici curiae file memoranda in support of jurisdiction, this can serve as a concrete indication of "public or great general interest" and convince the Court to hear the case. The Ohio Supreme Court opens its doors to amicus participation and does not require amici curiae to obtain leave of the Court in order to file briefs at the jurisdictional or merits stage.[8] At a recent event in Columbus, each of the three featured Ohio Supreme Court Justices (French, Kennedy and O'Neill) expressed their appreciation for high-quality amicus briefs. Justice French pointed out that such briefs are especially useful at the jurisdictional stage since they show that there is more at stake than just the dispute between the parties.[9]

An amicus brief on the merits can explain how the Court's decision will affect those other than the parties themselves.[10] This is one of its most important functions. For example, the case of *Albrecht v. Treon*[11] concerned a coroner who had retained a decedent's brain for forensic examination and testing and then disposed of it. The decedent's next of kin brought suit alleging that they had a right to his body parts prior to disposal. More than seventy-five public offices and counties filed amicus briefs in support of the coroner's office. In holding that the kin did not have rights in a decedent's body parts retained by a coroner for examination and testing, the Court noted that "[t]his case could have implications far beyond simply the parties involved, as is evidenced by the number of amicus briefs that have been filed." [12]

Amicus advocacy can also complement lobbying efforts in important ways. Many organizations – from business trade associations, to non-profit advocacy groups – lobby the legislature. Those who succeed in shaping legislation frequently consider the job complete at that point. They do not focus on the fact that, after the legislature passes a statute, the courts must interpret it, and that this judicial interpretation of statutory language can profoundly affect its meaning. Amicus advocacy at this stage can shape how the courts interpret a statute and so influence the meaning of the legislation itself. It is a valuable addition to successful lobbying.

An amicus party can address aspects of a case that the merits party it favors is not able to treat in its brief.[13] For example, the amicus party could devote its brief to a more in-depth discussion of a particular argument or issue of law; to a state-by-state survey of relevant statutes or case law; to defending against a particular argument leveled by the other side; to the historical background that contextualizes the case; or to a description of the relevant facts that goes beyond that which the merits party was able to provide. Each of these contributions complements and reinforces the merits party's brief. Together, the merits and amicus briefs can prove far more compelling than either one standing alone.

For example, in *Kincaid v. Erie Insurance Co.*,[14] an insured was sued by a person whom he had injured in a car accident. His insurance company settled and dismissed the case against him. The insured then initiated a class-action on behalf of all similarly situated policyholders alleging that the insurance company had failed to compensate him for postage, travel, loss of earnings and other expenses that he had incurred during the time that the company was defending the case. Amici curiae, a group of insurance companies with a strong interest in the outcome of the case, filed a brief in which they showed that the lawsuit was one of a number of similar class actions that the same lawyers had filed seeking to recover small, litigation-related expenses.[15] This cast the case in a different light. In so doing, it may have influenced the Court's ultimate decision to reject plaintiffs' claims for the recovery of their small expenses. This amicus brief, and the insurance company's merits arguments, worked well together and strengthened one another.

This article has illustrated just a few of the ways in which a strategic amicus brief can influence matters before the Ohio Supreme Court and other appellate courts. An amicus brief can also sway appellate courts by providing technical expertise that the amicus party possesses but the merits parties do not; by putting the amicus party's good reputation at the disposal of the merits party by formally endorsing that party's position; by giving the perspective of an entire industry where the merits party presents only that of a single company; by offering the Court a more attractive advocate for a controversial position (e.g. a civil liberties organization arguing as amicus curiae for the free speech rights of the Nazi Party); or simply by providing a higher quality brief than the merits party was able to produce.[16] In each of these ways, an amicus party can affect the outcome in a case before the Court and so further its own interests. By contributing resources and insights to the matter at hand, amici curiae may also be able to improve the overall quality of appellate advocacy and of the law. Perhaps amicus parties are "friends of the court," after all.

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2. Allison Lucas, Friends of the Court? – The Ethics of Amicus Brief Writing in First Amendment Litigation, 26 Fordham Urban L. J. 1605, 1605 (1999); Reagan Wm. Simpson & Mary Vasaly, The Amicus Brief: How to Write It and Use It Effectively 1 (2010).
3. Simpson & Vasaly, supra note 2, at 1.
4. Green v. Biddle, 21 U.S. (8 Wheat.) 1 (1823).
5. Robert L. Stern, et al., Supreme Court Practice 663 (8th ed. 2002).
6. Victor E. Flango, et al., Amicus Curiae Briefs: the Court's Perspective, 27 Just. Sys. J. 180, 185 (2006).
7. S.Ct. Prac. R. 5.02(A)(3).
8. S.Ct. Prac. R. 7.06(A)(1).
9. Federalist Society for Law and Policy Studies, Columbus Lawyers Chapter, Meet the Newest Ohio Supreme Court Justices, Columbus, OH (October 8, 2013).
10. Simpson & Vasaly, supra note 2, at 27.
11. 118 Ohio St. 3d 348, 2008-Ohio-2617, 889 N.E.2d 120.
12. Id., ¶ 2.
13. Joseph D. Kearney & Thomas W. Merrill, The Influence of Amicus Briefs on the Supreme Court, 148 U. Pa. L. Rev. 743, 750 (2000).
14. 128 Ohio St. 3d 322, 2010-Ohio-6036, 944 N.E.2d 207.
15. Id., ¶18.
16. Simpson & Vasaly, supra note 2 at 30-31; Kearney & Merrill, supra note 13, at 750.

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The Art and Constitutional Ramifications of Plea Bargaining

By Jessica G. Fallon

Learning how to work with a prosecutor and a judge to effectively and efficiently represent your client is perhaps one of the most important aspects of being a criminal defense lawyer. While many of us would love to try all of our cases, the hard truth is that over 95% of criminal cases resolve in some sort of plea agreement. It is no secret in our criminal justice system that overcrowded jails, a judge's clogged docket, a prosecutor's overwhelming caseload, and the simple financial resources and time that a jury trial may take, naturally lead to the process of plea negotiation. Throw in that mix that some of the allegations against our clients may be true (*gasp!*) and it becomes clear that plea bargaining can benefit everyone involved when done the right way and for the right reasons.

Let's start with the basics: A plea agreement is a process whereby a criminal defendant and a prosecutor reach a mutually satisfactory disposition of a criminal case, subject to the judge's approval. Plea agreements usually result in either an amendment to a lesser charge or dismissal of some charges in exchange for a guilty plea to other charges. While a prosecutor has no legal obligation to engage in plea bargaining, a defense attorney must at least attempt to engage in plea negotiations at the client's request.

If a prosecutor is willing to discuss possible resolutions to your case, why might your client consider anything less than a dismissal or a "not guilty" verdict? The most obvious reason is the possibility of receiving a lighter sentence for a less-severe charge than gambling with the possibility of losing at trial. Often times, the certainty associated with a plea bargain and the feeling of control that can bring to a client is enough to accept a negotiated plea. There are other, perhaps more practical, incentives for defendant's to accept a plea bargain.

First, litigation can be costly. Between attorney's fees, expert witnesses, and the time that must be taken from work and home, finances are an important consideration. For those defendants who remain in custody during the pendency of a case, getting out of jail may be a main priority. Thus, accepting a plea bargain that includes a "time served" sentence would be in their best interest. Your client may also simply want to resolve a matter quickly to avoid the hassle, social stigma, and publicity related with criminal allegations.

If the prosecutor is amenable to a possible plea bargain and your client is also on board, what are your obligations? Because the Supreme Court[1] has determined that an individual's Constitutional 6th Amendment right to the effective assistance of counsel applies to all aspects of a case, including plea negotiations, you MUST present any and all plea offers the prosecutor may suggest. This is true whether or not you think it is a good offer, or one your client would accept. Before taking a plea offer to your client, you need to be sure to have a full understanding of the facts of your case, what the prosecutor wants, what the sentence recommendation would be (if any), whether the judge would be amendable to such a resolution, and what type of sentence the judge may levy upon your client based on the guilty plea. It is also important that you have a frank discussion with your clients about their options, their chances of prevailing at a trial, and the ramifications that these options could have on their lives.

As defense attorneys we deal daily with plea bargaining. Deciding whether or not to accept a plea offer can be the most important decision your client may ever make. Always try to approach each case with a solid understanding of how a plea bargain may, or may not, benefit your client. Try to convey that understanding as honestly and often as possible. If a plea bargain simply is not in your client's best interest, prep your case for trial and work for that "Not Guilty!"

1. See Missouri v. Frye, 132 S. Ct. 1399 (2012) and Layler v. Cooper, 132 S. Ct. 1376 (2012).

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Saia & Piatt

The Arc of an Extraordinary Career

By Beatrice Nokuri

Photo by Susan Culler Soden

We look back at how the Capital University Law School Dean built a lasting legal career in Central Ohio.

Upon sitting down with Dean Richard Simpson, the dean of Capital Law School under whom I worked and studied prior to beginning my legal career at the law firm where he once served as managing partner, I found his passion for the law and his humility are abundantly clear.

"I thought I would be a scientist, but I ended up becoming an attorney, and it turned out better than I deserved," he says.

Dean Simpson's vision and experience with managing the day-to-day business operations at Bricker & Eckler, and serving as counsel for hundreds of bond financings around the Ohio region, made him uniquely suited to become dean at Capital Law School. After nearly four years in that role, Dean Simpson has announced that he will retire at the end of the 2013-14 academic year. But before doing so, Dean Simpson was kind enough to sit down with us at the Lawyers Quarterly and reflect on the arc of his career.

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"Dean Simpson is a great best friend and a good listener," says Dave Baker, Dean Simpson's longtime colleague, and friend of 54 years. "I met Dean Simpson when we were in sixth grade." Since then, the two have shared experiences as bottling experts of Seven-Up during summer breaks from college; as college students in 1968, when they traveled to 12 countries in 28 days; and as classmates at Michigan Law School.

In recalling their law school tenure, Baker said that "Dean Simpson always had great analytical skills and has always been good at solving problems," but that he also used law school to nurture his passion for athletics, despite his below average height. "Rich, being the athletic person that he is, organized and formed a league that allowed athletes of average height to become more involved in athletics."

After graduating in 1972, Dean Simpson joined Bricker & Eckler; fittingly, Baker joined him soon thereafter.

Dean Simpson made his mark on the law firm in several ways over the course of his 38-year tenure, but predominantly in his ten years of service as the firm's managing partner. His mark was also established in a more concrete way, however. When Columbus's original U.S. Courthouse and Post Office – a structure listed in the National Register of Historic Places – became vacant, and the firm began negotiations to buy and renovate the courthouse making it the firm's headquarters, Dean Simpson handled the negotiations with municipal officials and helped the firm navigate the complicated Federal regulations that threatened to derail the agreement. Thanks to Dean Simpson, the firm has been operating out of the iconic structure since 1986.

"Dean Simpson's skillful handling of the negotiations, financing, and renovations of Columbus's old post office building and making it Bricker's home will be his lasting legacy at Bricker," says Bricker's current managing partner, Kurt Tunnell.

In June of 2010, Dean Simpson was intrigued by a unique opportunity to become Dean at Capital Law.

"I was initially surprised at Dean Simpson's interest in academia, but it made sense," says Tunnell. "Dean Simpson possessed the required skills set to lead a law school during these challenging times."

"The legal profession is in a time of revolutionary change in the way legal services are delivered and it is going to affect vast segments of the profession."

"My time at Capital has been a wonderful but a challenging experience," Dean Simpson says. "These are very challenging times for legal education across the country. The applicant pool is much smaller today than it was in 2010 – it is approaching half of what it was four or five years ago; that puts a lot of pressure on schools that are tuition-dependent, such as Capital, who do not have state support, enormous endowments, or church support. So we need to rely on tuition dollars as the pool of applicants and the number of enrolled students decline, and that puts pressure on our operations. We had to make a number of adjustments by eliminating some positions, and some adjustments have led to better efficiency, which is a healthy thing; the difficulty in a number of these cases is that it involves losing people who are high performing individuals – and you have to see people let go because of no fault of their own."

The biggest challenge, Dean Simpson says, is driving down the cost of a legal education.

As part of his efforts to address this problem, Dean Simpson implemented a tuition freeze for the 2011-12 academic year to address student concerns about rising tuition costs. In addition, Dean Simpson lent his support to a recent proposal to the State Supreme Court that would permit law schools to offer an accelerated program. The proposal suggests eliminating the senior year of undergraduate courses and permitting undergraduate students to attend law school directly after completing their junior year, meaning that students would earn a law degree in six years, rather than seven years.

Other changes are needed, too, including better utilization of technology in law schools, something that Dean Simpsons believes will reap benefits to law students and to their eventual clients, as well.

"The legal profession is in a time of revolutionary change in the way legal services are delivered and it is going to affect vast segments of the profession," Dean Simpson says. "Much of the change is driven by technology and going forward, lawyers will need to be comfortable using technology in their practices if they want to be efficient in their practice and law schools have to include much better use of technology in their curriculum."

Despite the challenges, Dean Simpson has had a wonderful experience during his tenure at Capital Law. The feeling has been mutual.

"Dean Simpson has been a superb boss, who understands the need for a strong student services area," says Jennifer DiSanza, Assistant Dean. "I will miss working with him. His business acumen gave him a unique perspective on legal education. He has had to make some tough decisions in this era of lower enrollment, and he is supported by his staff. He took over in a time where there weren't any glaring issues in enrollment, and throughout his four years the country has seen a decrease in enrollment, and he and his team have responded to that in numerous ways. I believe his goals for the school, maintaining its core values of access and opportunity, and improving the law school experience, have been fulfilled."

His goals for young attorneys are worthwhile, too: "Start building a network of friends and colleagues in the community early on by getting involved and being very intentional about it; these relationships will sustain you through the good and challenging times."

There is no better example of that sort of relationship as the one Dean Simpson has built with Dave Baker. And as fate would have it, the latter recently announced his retirement, as well. The two are looking forward to retirement, and are already planning their next round of adventures.

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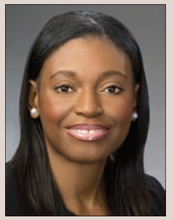

The Evolution of the Lautenberg Amendment

What is a crime of domestic violence?

By David J. Fetters

In *United States v Castleman*, 695 F.3d 582 (6th Cir. 2012), the Sixth Circuit Court of Appeals limited the federal firearm disability under 18 U.S.C. § 922(g)(9) by refining the degree of force required for a conviction to qualify as a misdemeanor crime of domestic violence. The court ruled that Castleman's conviction for misdemeanor domestic assault under Tennessee law did not qualify as a predicate offense, and therefore he was not subject to the federal disability. Before explaining the reasoning behind the Sixth Circuit's decision, an understanding of the law prior to *Castleman* is useful in appreciating the full import of the court's ruling.

Congress passed the Lautenberg Amendment on September 30, 1996, creating a federal firearm disability for individuals convicted of misdemeanor crimes of domestic violence. The law is applied retroactively and nearly every individual convicted of a qualifying crime has been subject to a lifetime firearm ban. The law defines a misdemeanor crime of domestic violence (MCDV) as a conviction that

> "(i) is a misdemeanor . . . and (ii) has, as an element, the use or attempted use of physical force, or the threatened use of a deadly weapon, committed by a [person having a qualified domestic relationship with the victim]."[1] The previous conviction will not be considered a predicate offense "if the conviction has been expunged or set aside, or is an offense for which the person has been pardoned or has had civil rights restored (if the law of the applicable jurisdiction provides for the loss of civil rights under such an offense) . . . ."[2] The predicate offense does not have to have a domestic relationship as an element as long as it includes " as an element, the use or attempted use of physical force . . . ."[3]

To determine what convictions qualify as a predicate offense for an MCDV, the Sixth Circuit applies the "categorical approach" developed by the United States Supreme Court in *Taylor v. United States*, 495 U.S. 575 (1990) and subsequent cases.[4] Taylor examined the Armed Career Criminal Act (ACCA), a statute that imposes lengthy mandatory minimum sentences for individuals found in possession of a firearm who have committed three or more violent felonies or other specified crimes. The categorical approach is applied under both the ACCA and the MCDV because both are federal laws triggered by convictions under state or federal law. To determine whether a statute qualifies as a predicate offense, the categorical approach asks whether all individuals convicted under the statute meet the threshold contained in the federal law. If the statute of conviction is overbroad and covers conduct that does not meet the threshold, the statute itself never qualifies as a predicate offense.[5]

Unlike many other federal firearm disabilities, most individuals caught in the "Lautenberg trap," cannot avail themselves of the usual processes to regain their firearm rights. In Ohio, convictions under R.C. 2919.25(A) and (B) are ineligible for sealing because they are first degree misdemeanor offenses of violence.[6] Moreover, because Ohio law does not take away the civil rights of misdemeanants, the state is incapable of restoring their civil rights.[7] The practical result is that knowingly causing *de minimis* physical harm to family or household member in violation of R.C. 2919.25(A) creates a lifetime firearm ban. Abusers who cause serious physical harm and are convicted under R.C. 2903.11(A)(1) felonious assault paradoxically can have their civil rights restored, and eventually regain their firearm rights.

As a firearm rights advocate and as an attorney, I find something palpably discomforting about a lifetime firearm ban for a misdemeanor conviction. Regardless of the underlying justification for the Lautenberg Amendment, no citizen should permanently lose a Constitutional right solely on the basis of a misdemeanor conviction. Moreover, unlike the federal disability for felons under 18 U.S.C. § 922(g)(1), there is no safe harbor for "official use" of firearms.[8] Police officers and members of the armed forces convicted of an MCDV predicate offense often lose their job because they can no longer legally handle a firearm.

The Sixth Circuit in *Castleman* dramatically limited the scope of 922(g)(9) by refining the degree of force necessary for a conviction to constitute a predicate offense. The court held that the degree of force required for an MCDV is the same degree of force *U.S. v. Johnson*, 599 U.S. 133(2010) requires for a violent felony predicate offense under the ACCA.[9] *In Johnson*, the Supreme Court interpreted "physical force" under the ACCA to mean "violent force – that is, force capable of causing physical pain or injury to another person."[10]

The Sixth Circuit stated that the term MCDV "is most naturally interpreted to mean any crime requiring strong and violent physical force, ..."[11] The court further explained that an MCDV is "a subset of misdemeanor offenses which does not include all assault and battery offenses, but rather only those assault and battery offenses in which violent physical force is involved."[12] Castleman was indicted for knowingly or intentionally causing "bodily injury to [the mother of his child]."[13] Under Tennessee law, bodily injury includes "a cut, abrasion, bruise, burn or disfigurement, physical pain or temporary illness . . . ."[14] The court reasoned that it was therefore possible to knowingly cause a bodily injury without using "violent" force, and gave as examples causing a paper cut or stubbed toe.

The direct implications of *Castleman* are limited to the Tennessee domestic assault statute because the categorical approach examines each statute individually. Applying the logic of the case to Ohio law suggests that Ohio's domestic violence statute does not qualify as a predicate offense. The subsection of Tennessee's domestic assault statute at issue in *Castleman* is similarly worded to Ohio's R.C. 2919.25(A) domestic violence statute, which prohibits "knowingly caus[ing] or attempt[ing] to cause physical harm to a family or household member." Ohio law defines "physical harm" as "any injury, illness, or other physiological impairment, *regardless of its gravity or duration.*"[15] Because any injury is sufficient under Ohio law, an individual can commit domestic violence in a way that does not use violent physical force.

Although *Castleman* suggests that Ohioans with domestic violence convictions can own firearms, until the Sixth Circuit has an opportunity to rule on Ohio's domestic violence statute, federal law enforcement will probably still enforce the Lautenberg Amendment as it was previously understood. A circuit split has developed over whether simple assault and battery or the *Castleman/Johnson* violent force requirement is the correct quantum of force for an MCDV.

The United States Supreme Court granted certiorari in *Castleman*, docket no. 12-1371, to resolve the circuit split and oral arguments are currently scheduled for January 15, 2014.

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1. 18 U.S.C. § 921(a)(33)(A).
2. 18 U.S.C. § 921(a)(33)(B)(ii).
3. See U.S. v. Hayes, 129 S. Ct. 1079 (2009).
4. U.S. v. Gibbs, 626 F.3d 344, 352 (6th Cir. 2010).
5. Taylor only applies to indivisible statutes. For divisible statutes, courts apply the "modified categorical approach." See Shepard v. U.S., 544 U.S. 13, 125 S.Ct. 1254 (2005), see also Descamps v. U.S., 133 S. Ct. 2276 (2013).
6. See R.C. 2953.36(C).
7. See U.S. v. Bridges, 696 F.3d 474 (6th Cir. 2012), citing U.S. v. Logan, 552 U.S. 23 (2007).
8. See 18 U.S.C. § 925(a)(1).
9. Castleman, 695 F.3d at 587.
10. Johnson, 599 U.S. at 140 (2010) (emphasis sic).
11. Castleman, 695 F.3d at 588.
12. Id.
13. Castleman, 695 F.3d at 583 (modified in original).
14. Tenn. Code Ann. § 39-11-106(a)(2).
15. R.C. 2901.01(A)(3) (emphasis added).

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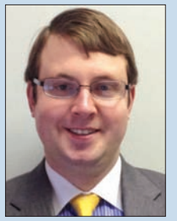

David J. Fetters, Barney DeBrosse

Probate Law 101: Estate Planning

By Trent Stechschulte

Many new lawyers will undoubtedly be asked at some time in their legal career to write a will, administer an estate or handle some other estate planning guide for a client, family member or friend. An effective estate plan, in part, is to distribute one's assets to the desired beneficiaries by minimizing the cost of going through the probate process. After talking with a local Magistrate, consulting with several local practitioners, and researching the issue I have put together some important points to consider when writing a will and putting together an effective estate plan. Please note this not meant to constitute legal advice, but merely to provide a general blueprint of items to consider when dealing with an estate planning issue.

Drafting a Will (Formalities: R.C. § 2107)

Client must be 18 years or older and must be of a sound mind at the time of making the will.

Will must set forth how property is to be distributed at your client's death.

Will must be in writing and your client must sign at the end of the will.

Will must nominate an executor to administer the distribution of your client's estate and property at death and must also designate a guardian for all your client's minor children.

Two disinterested witnesses must witness your client signing her will. An "interested witness" is a beneficiary under the will acting as a witness to the signing of the will.

Information Your Client Should Be Sure To Provide

Deeds to any real estate owed or interest held.

Copies of bank statements setting forth amounts and ownership rights.

List of all life insurance policies, including face and cash value amounts and the beneficiaries.

Retirement accounts and retirement plans.

Names and addresses of the people your client wishes to give property.

Names and address of the person of executor, guardian of minor children and trustee. Tell your client to bring information for a second and third choice in case one cannot serve for whatever reason.

Practice Tips

It is good practice to designate two backup executors in the will in the event the named executor predeceases. A trusted family member as the executor is preferable if available or, alternatively, someone your client believes can competently handle the paperwork and administrative process. If such a family member does not exist, designating a trusted attorney may be the best option.

The probate process is expensive. Take the time to understand and take advantage of the strategies available that allow your client to pass assets outside of probate including joint ownership, beneficiary designations and transfer on death designations.

Along with a spreadsheet detailing all bank accounts, retirement accounts, investment accounts and insurance policies, your client should also provide you or someone he trusts with all his computer passwords. The passwords may be necessary to close certain billing services and deactivate accounts.

While a will distributes assets to beneficiaries automatically upon death, a trust allows your client to have control of his assets even after death. A trust is a legal mechanism that allows your client to put conditions on distributing the assets of the estate by appointing a person (or entity) to manage and control those assets pursuant to his wishes. You should diligently research to determine whether this is the best route for your particular client to take.

Advance Directives

These three documents should always be included in your client's estate plan. Each document has a specific purpose and takes effect at different times.

Durable General Power of Attorney – This document allows your client (the principal) to designate another (the agent) to perform business and financial tasks for your client, to act on her behalf, if the principal becomes incapacitated. These powers extinguish once the principal dies.

Living Will – This document allows clients to declare their wishes related to life sustaining treatment. Your client may direct a healthcare facility to withhold nutrition and hydration if he or she is suffering from a terminal condition or is in a permanently unconscious state. The determination of either a terminal condition or a permanently unconscious state is made by your treating physician and at least one other physician. Living wills also include "Do Not Resuscitate" identification. This section serves as a notice to the treating physicians that CPR and other measures are not to be performed in the event that one is terminally ill or permanently unconscious.

Healthcare Power of Attorney – This document gives your client the power to designate someone to make healthcare decisions in the event your client loses that ability. Explain to your client that the decisions the agent can make are the same your client would have if given the capacity to provide them: informed consent, withdraw of informed consent, consent to care and treatment, or the request of a particular diagnosis. Included in the healthcare power of attorney are decisions on whether to approve measures to prolong life and allowing your client to choose specific medical procedures in certain instances. Commonly, spouses are appointed as the agent and adult children are appointed as alternates. The Franklin County Probate Court provides the form for this and explains the many options for your client.

Just as your client's needs evolve, estate administration is a complex legal area that is constantly changing and developing. For more information on estate administration in Ohio, visit the Franklin County Probate Court website at www.franklincountyohio.gov/probate/.

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SPOTLIGHT ON THE BARRISTER LEADERSHIP PROGRAM

By Catherine Woltering

Have you ever been at a networking event wondering how to introduce yourself to a group of people you've never met? Do you want to be more involved in the legal community or city of Columbus? Do you wonder how you're supposed to plot your path to success? Would you like to meet other new attorneys in the Columbus area? If you answered yes to any of these, the Barrister Leadership Program might be for you.

The Columbus Bar New Lawyer Committee offers an opportunity to engage in ongoing substantive programming aimed at developing leadership skills and opportunities for young lawyers. Through the power of partnerships developed by successful Bar leaders, the Barrister Leader Program is able to connect new attorneys with the best and brightest from Columbus law firms and other groups, harnessing the wisdom and experience of some of our city's top legal minds and leaders of the profession.

The program is designed to help new attorneys find personal and professional success by developing communication skills, examining business development and marketing skills, learning how to manage client relationships and expectations, developing their negotiation techniques, and setting personal and professional goals. Participants attend monthly meetings where they engage in a mix of interactive exercises, classroom sessions, and question and answer sessions with notable leaders in the community. Additionally, the program hosts various networking and social events so the participants have the opportunity to get to know one another and develop a network of peers.

Former participant Lindsey D'Andrea believes the Barrister Leadership Program helped her "develop more confidence in networking – helping me gain comfort through both the formal sessions and the informal social events." The opportunity the program gave D'Andrea to meet and befriend other young leaders in the community inspired her to become more involved, "I am excited to put the skills I've learned to use since the program has ended."

The program meetings take place from 7:30am-9am on the second Thursday of the month from January to June. Sound early? Don't worry, the program provides breakfast and plenty of coffee. Networking and social events are scheduled throughout the program, with the schedule confirmed in advance of the first session. The application period traditionally opens in early fall, with individuals selected for the program being notified in early December. Once accepted, participants are responsible for a $125 enrollment fee.

Congratulations to the 2014 Barrister Leadership Class: Christopher Bagi, Ohio Attorney General; Gerrod Bede, Organ Cole + Stock; Andrew Bonnington, Fifth Third Bank; Jessica Carrico, the Law Office of Eric J. Allen; Marc Davis, Ohio Attorney General; Danielle Demming, Jump Legal; Eric Eilerman; Dale Frenz; Kailee Goold, Kegler Brown Hill & Ritter; Michaela Hahn-Lawson; Orsolya Hamar-Hilt, Supreme Court of Ohio Office of Disciplinary Counsel; Brian Harstine, Terrence A. Grady & Asscs.; Nicole Koppitch, Reminger Co.; Whitnie Kropp; Joseph Kunkel; Lisa Lagos, Lagos & Lagos; Anne McNab, Fishel Hass Kim Albrecht; Caitlyn Nestleroth, Ohio Attorney General; Zachary Pyers, Reminger Co.; J. Thomas Siwo, Bricker & Eckler; Susan Suriano, Grossman Law Offices; Craig Tuttle, Leeseberg & Valentine; Heather Williams, Franklin County Prosecutor's Office; Christopher Zoeller, Cooke Demers & Gleason.

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Catherine Woltering, BakerHostetler

BARRISTER LEADERSHIP PROGRAM

If you are looking for a way to develop leadership and communication skills, get involved in the Bar Association and build a strong network of colleagues, the Barrister Leadership Program might be for you. The program runs from January – June each year and includes interactive classroom sessions, small group meetings, and social events. Applications are available in August with a submission deadline of mid-October. Individuals selected to participate in the program are notified prior to Thanksgiving and the kick off session for the new program year is held at the beginning of January.

If you are interested in obtaining an application, contact Donna Sweet at donna@cbalaw.org or watch the New Lawyers Committee section of the Columbus Bar website.

First Hand Observations From Egypt's Constitutional Referendum Election

A Study of the Roles of Lawyers and Judges in Protecting Democracy

By Jennifer Brunner

The mass protests at Tahrir Square in Cairo, Egypt, beginning January 25, 2011, marked the beginning of the end of a long-held dictatorship under President Mubarak and the birth of democracy in Egypt. For Egypt it has been an arduous journey to democracy as Americans would recognize it, and there is still much ground to cover. After voting for and adopting a new constitution in 2012, Egyptians narrowly elected a new president, Mohammed Morsi, of the Muslim Brotherhood Freedom and Justice Party, founded in Egypt in 1928.

Since April of 2013, the Egyptian government had vetted and approved a group of observers for this work through the American organization, Democracy International. DI is a non-governmental organization that has been engaged in democracy building, rule of law assistance and election observation in 60 countries in the last eleven years. I was among a group of 83 observers from 10 countries who were there January 14-15, 2014 to observe a long awaited election, this time to vote on a second constitution in less than three years.

The Muslim Brotherhood is a movement formed in Egypt in 1928 against foreign imperialism and for unity among Arab countries and promoting religious law, called "Sharia." It has spawned political parties throughout the Arab world. "Sharia" is considered the infallible law of God and governs many personal, daily activities of individuals – beyond the typical societal concerns such as crime, economic and political power, sexual relations, hygiene, diet, prayer, etiquette and fasting. Interpretation of the Quran in Sharia is strict and governs behavior of women, including their segregation from men, separate curriculum in school, tenets against ostentation in dress and rules governing behavior.

The Muslim Brotherhood is linked with branches and representative political parties in the countries of Bahrain, Syria, Jordan, Iran, Iraq, Saudi Arabia, Kuwait, Yemen, Oman, Morocco, Algeria, Sudan, Somalia, Tunisia, Libya, Mauritania, and also holds a history of activity in Israel. As the strongest political party in Egypt, its Freedom and Justice Party presidential candidate, Mohammed Morsi, won Egypt's first democratic election with 51.73% of the vote over a former Mubarek prime minister.

In November of 2012, Morsi issued a decree stripping the judiciary of the right to challenge his decisions, but later rescinded it under populist protest. Actions between the branches of the Egyptian government and the military throughout his presidency created imbalance and government paralysis, delaying a $4.8 billion International Monetary Fund note to Egypt in late December 2012. By June of 2013, then President Morsi appointed Islamist allies as regional leaders

in 13 of Egypt's 27 governorships, including a member of a former Islamist armed group linked to a massacre of tourists in Luxor in 1997. Tourism is an integral part of the lifeblood of Egypt's economy, and for me that was confirmed by so many people having told me that visiting Egypt was on their "bucket list" when they learned I would be traveling there.

On June 30, 2013, Egyptians again protested in the streets, this time to protest Morsi's tumultuous rule. The protest was sparked by a grassroots movement, called Tamarod, whose goal was to collect 15 million signatures calling for Morsi's resignation. The group claimed it had collected 22 million signatures.

With the June 30, 2013 Tamarod protests, Egypt's military cited an unprecedented number of protestors. Its commander in chief, Abdel Fattah Sisi, announced a 48-hour deadline for differences to be settled, or the military would take action. On July 3, 2013 General Sisi announced that the 2012 constitution and Morsi's presidency were suspended. In tandem, General Sisi announced a roadmap for democratic transition and appointed the head of the Supreme Constitutional Court, Adly Mansour,[1] as interim president.

The drafting of the new constitution was not without controversy. To many Egyptians' dismay, the 2012 constitution was abandoned in its entirety, a departure from the roadmap previously announced. Election of the new constitution was required within 30 days. On December 14, 2013, President Mansour announced that an election would be held over two days, January 14-15, 2014.

Activities in the lead-up to the election included a crackdown on the Muslim Brotherhood, including the arrests of many of its prominent leaders and members of other Islamist parties. The Muslim Brotherhood was branded a terrorist organization, and as under Mubarak, found itself positioned much as it had been during significant periods of its history since 1928.[2] In November of 2013, a new "72-hour protest law" was issued by decree by the interim government that restricted political expression in assemblies of more than ten people in public spaces without government permission. This new decree was used as the basis for arrests of key activists, including those who protested the 72-hour law, for raiding offices of human rights organizations and for taking journalists into custody without charges being filed.

Before I arrived in Egypt on January 11, 2014, campaigning against the referendum had been sparse, with Islamist groups, including the Muslim Brotherhood, forming a coalition of organizations that argued that the removal of President Morsi and the July 3 constitutional declaration were illegitimate. The coalition called for a boycott of the election on a new constitution. Many election observers, I among them, noticed that few young people voted at the polling places we observed during the election.

The evening I arrived in Egypt I noticed on the drive to our hotel in Cairo from the airport, green signs that looked to be metal, professionally lettered in Arabic and bolted to light poles. They contained boxes with check marks. Additionally, dissent had been reduced to a minimum, and overall turnout resulted in 41% of Egypt's eligible voters voting.[3]

Election Day voting in Egypt saw with large numbers of military and police personnel in full uniform with riot gear shields, sand bag barricades for sharpshooters and soldiers openly standing guard with weapons in the polling places. Police guarded the outside of the schoolyards, that were surrounded by concrete walls with paved courtyards and school buildings within. The polling centers were in dusty classrooms.

Few of the polling places were accessible for persons with disabilities. Soldiers dressed in khaki fatigues gingerly and patiently helped many older people slowly climb the steps and step over tall door jambs that lay between the polling centers and their courtyard entrances.

From my previous USAID work in Serbia, I was already familiar with cardinal rules of conduct for foreigners. They included staying away from large gatherings, especially protests, and never photographing law enforcement or military personnel or their buildings or cars. I knew that the most important thing I needed to be able to say in Arabic was "thank you" or "Shukran" (pronounced "Shook-run"). I had researched dress customs for women, down to nail polish, knew not to look people in the eye when passing, especially men, and always, to be kind to children and respectful of older people. I knew from my experiences in other countries that, regardless of the differing cultural and religious norms and backgrounds, people generally respond to respect and kindness.

Those of us who could travel on two-weeks' notice, eighty-three of us, left our daily lives in ten countries and accepted Democracy International's invitation to be observers of Egypt's second election on a new constitution. When I arrived in Egypt, I was amazed at how the small core DI team, themselves gathered from different parts of the world, managed the logistics of bringing everyone together, organizing their travel and accommodations, seeing their safe passage to and from the various parts of Egypt during the week we were there and orienting the large group of us to our tasks – all in the short time frame in which the election had been called.

DI, headed by Eric Bjornlund, was the only U.S. and the largest international organization accredited by the Egyptian government to observe the election. Bjornlund authored of the book, Beyond Free and Fair: Monitoring Elections and Building Democracy, on the history and evolution of international election monitoring and how its effective use improves democracy. He maintains that one of the risks of international election observation is that the presence of observers may be taken by some to be an endorsement of the government or its processes. To minimize that impression and in keeping with the Declaration of Principles for International Election Observation, adopted at the United Nations in 2005, each observer signed a pledge to abide by a Code of Conduct based on principles rooted in respect for differences, objectivity and professionalism.

I had originally been paired as part of a two-person observer team in Cairo with Eric, but DI's role in communicating with the Egyptian government, the U.S. embassy, the various political parties and the judges who actually administered the election at the polling places, kept him away from the day-to-day preparatory and observation work. I was assigned to a new partner, a Tunisian woman named Kaouther, who was a DI employee from Tunis, deployed to Egypt to handle the financial recordkeeping and reporting duties of the mission as well as to observe.

I was grateful to Kaouther, as she understood and spoke Arabic and helped me to spot occurrences like loud music blasting pro-referendum songs in Arabic from multiple mega-speakers across the street from a prominent polling location. She quietly pointed out an official in a polling place wearing a fluorescent vest with embroidered words in Arabic in favor of the referendum. We observed this same man posting a large pro-constitution flyer in the hallway of the school directly in front of where we sat on a bench outside a classroom where voting was underway. I had been entering information into the electronic tablet assigned us for recording our observations. I looked up when gently nudged by Kaouther. The black canvas vests we wore with the stitched white English and Arabic words, "International Election Observers," were clearly not visible to him. I quietly made another note in our report.

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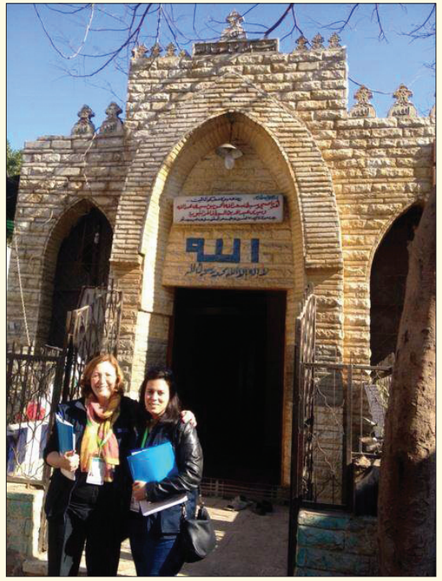
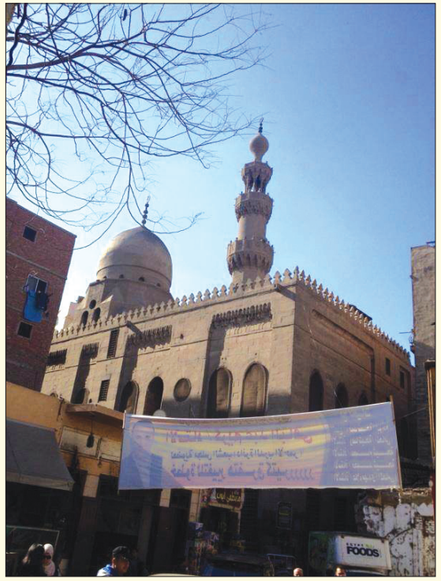

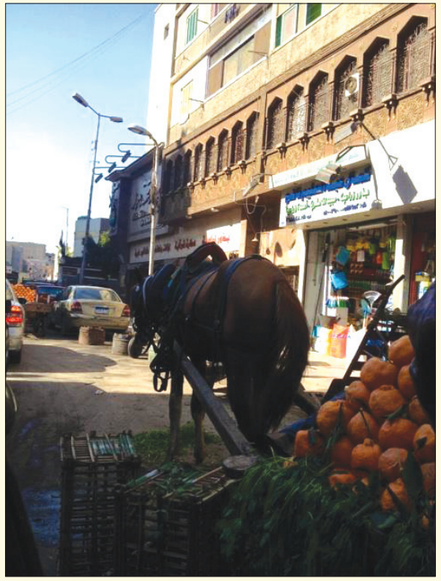
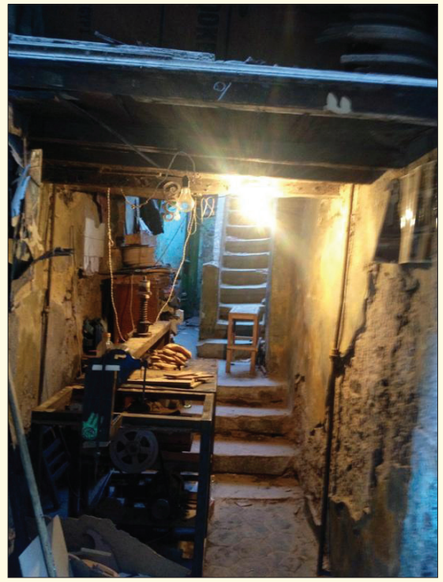

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Our observation team included a twenty-five-year-old woman who was on her first mission as an Egyptian interpreter and a driver named Hamid, in his fifties – capable, friendly, resourceful and not afraid to ask for directions, (unlike many American men I know.) Our interpreter's family became concerned when she was filmed with me on television at a polling location, and we took great care to shield her from any type of media scrutiny after that.

Cairo traffic is some of the worst in the world. It is standard practice for drivers to yell out their windows to passersby to learn where a destination is and quickly but politely yell, "Shukran" as they keep driving. For me, this din became background noise as I furiously tried to enter information into the electronic tablet before the next polling location stop. The tablet could record geographic coordinates at each polling place as our interpreter translated from Arabic to English how to spell the name of the polling place.

The highlight of the many places I observed in Cairo was in an ancient part of the city called "Darb Al Akhmar." No team received a strict list of polling places to observe within their designated area. The DI support team understood Egypt and its current pockets of instability, and flexibility was needed. This bore out with text messages during the day such as to avoid Tahrir Square because of a protest, that exacerbated already constricted traffic patterns and caused scrambling on the second day to reach our last polling location before it closed.

It was in Darb Al Akhmar that I understood most clearly why I was there. After having made it into the school room past dozens of armed police and soldiers, I introduced myself to the polling place judge who treated our team with kindness, offering us hot tea. We gladly accepted. Not long after we arrived, I watched as soldiers gently and slowly helped a frail, thin older woman dressed in a long black gown climb the last steps to the schoolroom and slowly seat herself next to a poll worker table.

Poll workers there showed her great respect, bringing the poll book to her and bending toward her slight, seated frame to ease her effort to her sign it. Like a great number of older Egyptians whom I saw voting, she was illiterate and used her thumb pressed into blue ink to place her "signature" in the poll book.

She continued to use her inked thumb, placing it within one of two circles (red or blue) to cast her vote for or against the referendum on a paper ballot little bigger than a postcard. The judge placed her ballot in the ballot box as permitted by the rules of the Egyptian High Electoral Commission. She was then assisted in standing and placing her finger in the magenta ink, evidence that she had cast her vote. I looked down at my notes and bit my lip. I had learned as a judge to raise my eyes to the ceiling when situations were emotional; tears don't come that way. I got a good view of the schoolroom ceiling in that polling center.

At the final polling location of the day, the judge who operated the polling center wanted to practice his English with me. He was adamant that he did not see how American jury trials could possibly work. I was just as adamant that they are an essential part of democracy. Our conversation ensued for 45 minutes. During our discussion, he told me that he likes to watch American movies to work on his English and that he hopes to make it to the U.S. someday.

As we left our last polling place, a soldier escorted us to the street. I thanked him with the usual "Shukran." He said in perfect English, "You're welcome. It's my job." He smiled and warmly shook my hand.

I was privileged to observe not just an election process that lasted two days, but also the demeanor of the Egyptian people. From the many polling places I visited, Egyptians seemed to me weary of the unrest, wishing to move forward. Some carried photographs of General Sisi, who appeared to be quite popular among the people. Others simply voted quietly and returned to their daily lives. Our role in observing the election was to provide a lens for Egyptians, their government and the rest of the world to see from the trenches a process that strove to prove itself a democracy. Overall, DI's initial assessment, issued two days after the election, was that the election process, itself, was relatively problem free. With judges having overseen a fairly simple process – a vote of "yes" or "no" for a new constitution, not much difficulty was expected. DI's initial report, however, cited the need for broader opportunity for political discourse in the lead-up to the election.

As lawyers and judges in the U.S. we take seriously our oaths to uphold and carry out the rule of law. In Egypt, judges not only carried out the rule of law in courtrooms, they did so at a most basic level, in dusty schoolrooms, one vote at a time. Observing that process was a vivid reminder of why I am a lawyer and have been a judge. Lawyers and judges maintain a unique role in protecting the rule of law in a democratic society.

Egypt is but one country that struggles in to achieve democracy. Regardless of where a nation is in its path of self-governance, this experience confirmed what I already knew: Elections and the courts have the greatest effect on citizen confidence in the integrity and fairness of democracy. Watching an ancient culture struggle to embrace and integrate a democracy that will lift its citizens to safety, economic security and happiness in the 21st century demonstrated to me that the roles of attorneys and judges as the keepers of the rule of law remains more than critical and reaffirms the importance of what we do.

If you would like to follow events in Egypt more closely, you can subscribe to the Project on Middle East Democracy Egypt Daily Update and follow news online through the Egypt Independent and Ahram.

[1.] As of February 24, 2014, Interim President Mansour and his cabinet resigned with the apparent intention to pave the way for presidential elections and for the expected election of General Sisi. Mansour asked his prime minister, Hazem el-Beblawi, to stay on until a new cabinet is formed. Beblawi stated, "This is not the time for personal interests. The nation is above everybody." http://english.alarabiya.net/en/News/middle-east/2014/02/24/Egyptian-government-resigns.html

[2.] The repression of the Muslim Brotherhood movement in Arab territories has been associated with its implication in alleged violence, killings and assassination throughout its history.

[3.] In Egypt, national ID cards are issued, and voters must show them or a passport to be able to vote. Voter registration is not an issue with national IDs: poll books for voters to sign when they appear to vote are based on government records.

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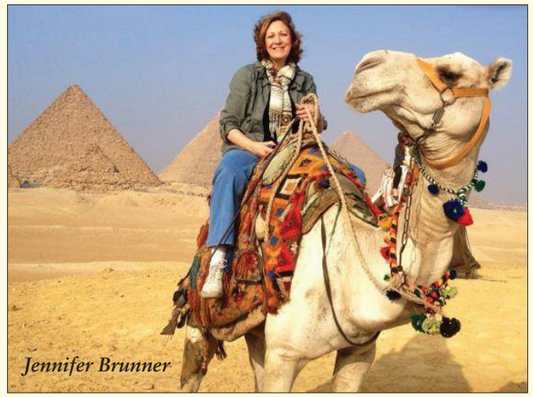
Jennifer Brunner

Round Out An Attorney's Life

By The Honorable David E. Cain

A local agency is seeking some good-hearted attorneys to step out of their legal mindsets and assist a court in a different way – in a role focused on the most vulnerable individuals caught up in the judicial net.

"If you work in one area of the law, volunteer for a non-profit that works in another area of the law. Build more skills. Expand your professional network. And see what passions and opportunities may be ignited." Kathy Kerr, CASA executive director, implores. "And you are changing the world of a child in such a positive way that the fulfillment will spill over into other parts of your life," she predicts.

> "If you work in one area of the law, volunteer for a non-profit that works in another area of the law. Build more skills. Expand your professional network. And see what passions and opportunities may be ignited."

Kerr wants to add to CASA's base of guardians ad litem (GALs) who speak for abused, neglected or dependent children in the Franklin County Domestic Relations/ Juvenile Court.

CASA stands for "court appointed special advocates" and has its offices in the Franklin County Courthouse although its funding is both public and private. "It is the only independent, non-profit organization that recruits, screens, trains and supports community volunteers to be advocates in courts and to be a consistent person in a child's life until a safe and permanent home is secured," Kerr pointed out.

Currently, the GALs number about 250 and include teachers, retired police officers, nurses and construction workers, along with many other occupations. They served 779 kids in 2013.

GAL volunteers must complete background checks and an extensive, 40-hour training class before a domestic/juvenile judge holds a special swearing-in ceremony to make them officers of the court.

Once assigned to a case, the guardian sees the child at least once a month in the home (usually that of a foster parent) and serves as the voice of the child in court. "The system focuses on the family. The GAL focuses only on the child's best interests," Daniel Sullenberger, one of four CASA attorneys, commented.

The volunteers must give CASA a two-year commitment because a GAL can be on a single case that long.

The process works as follows. Franklin County Children's Services begins an investigation, often based on information received from persons – teachers, nurses, police officers – who are mandated by statute to report suspected child abuse, and then decides whether to work with the family voluntarily or to file a complaint in court. CASA reviews all case filings (it can only serve about 800 of the some 4000 children involved in the cases that are filed each year) and selects the "worst of the worst" (usually cases involving multiple children, severe physical abuse, or children under three years of age). For those, CASA is appointed by the court to serve as guardian ad litem.

When cases are assigned to CASA, its staff attorneys handle the legal duties and volunteer GALs attend to the guardian activities, such as interviewing the children, investigations in the schools and homes, and reporting to the court. The rest of the cases are assigned to private attorneys who have to divide their time between the legal and the investigative obligations.

The court has 90 days to get a case to adjudication, i.e. a finding that a child is abused, neglected or dependent. But there is no limit on how many times a case can be filed. The case is reviewed by the court 12 months after a child is placed in FCCS custody or, if the child remains with a parent, 12 months after adjudication.

The court can order FCCS custody for only a year, but two six-month extensions are permitted. So, a GAL can be responsible for monthly home visits (and monthly reports to a CASA attorney) for up to two years. The GAL gets to know the child better than anyone else in the system, Kerr noted, so he or she is called upon in court for an opinion on how the child is doing in school and in the home, along with any big concerns the GAL may have.

Rule 48 of the Ohio Supreme Court's Rules of Superintendence spells out the steps the court must take to ensure that only qualified people are appointed as guardians and then outlines the duties of the guardians with regard to such things as training, confidentiality, and reporting.

Since 1977, 36 CASAs have been formed around Ohio. The local one was established in 1991 and has a staff of ten, including the attorneys, two case managers, a trainer and a fundraiser. Its annual budget is about $750,000. About a third comes from the county through the Juvenile Court's budget. Additional funding includes federal Victims of Crime Act (VOCA) grants awarded by the Ohio Attorney General's office, individual gifts, corporate sponsorships and foundation grants.

Kerr hopes to recruit about 75 new volunteers in 2014. Male and minority GALs are especially needed since 52 percent of CASA's clients are male and 47 percent are a racial minority. Last year, volunteer time spent on cases by CASA volunteers totaled more than 11,000 hours.

Judge Dana S. Preisse, domestic/juvenile administrative judge, said GALs often find the work much more fulfilling than they expected. "And it can be an eye-opening experience, exposing the volunteers to a side of life they have never personally witnessed. Often, they end up being very grateful for the environment in which they were raised.

CASA volunteers are motivated by a purely altruistic desire to find what is in the best interest of the child, and their opinions are meaningful and considered by the courts. If you have the time and inclination, you won't be sorry. You will meet some interesting people in the classes and will have a life-altering experience."

"We give them hope, love and a chance to grow up," Greg May, a former Buffalo Wild Wings franchisee and the chair of CASA's 19-member board, said at a recent fundraiser. Yvette McGee Brown, former Ohio Supreme Court justice who served as the keynote speaker, was more candid. "The 9-year-old you ignore today will be the 15-year-old with a 9 millimeter in your back tomorrow."

Learn more by contacting CASA of Franklin County at *www.casacolumbus.org*.

David_Cain@fccourts.org

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

How To Give An Effective Closing Argument

By John M. Gonzales

"It is astonishing what power words have over man."

— Napoleon Bonaparte

It is widely accepted that jurors have already made up their mind about your case by the time closing arguments are given. So what difference will your closing argument make to the jury in deciding the case? Considering that the most important arguments take place in the jury room where jurors are free for the first time to express their views of the case, closing argument gives favorable jurors the persuasive tools to champion your arguments. A persuasive closing is essential to maximize the effectiveness of these jurors in their attempt to win your case.

How does one give an effective closing argument? The lawyer has more control over the closing argument than any other aspect of the case. For that reason it should be creative, credible, and convincing, within the boundaries of the law.

Determining what arguments might be outside those boundaries is a difficult task as trial counsel is afforded wide latitude during the presentation of closing arguments.[1] Whether counsel has exceeded the proper bounds of closing argument is a discretionary determination to be made by the trial court. The trial court has the ability to determine whether there is a substantial likelihood that the jury may be misled by remarks that are not supported by the evidence and that are calculated to arouse passion or prejudice or designed to misrepresent evidence.[2] Absent an abuse of discretion, the trial court's decision will not be reversed on appeal.[3]

Judges are usually deferential to attorneys and will often allow them to stray somewhat beyond the boundaries of appropriate argument to the jury. In practice, experienced counsel rarely bother to object to anything but the most outlandish statements made by opposing counsel. Usually, even if an objection is entered, judges are unlikely to sustain the objection and the interruption may appear rude to the jury.

Unfortunately, as the stakes of litigation have grown, attorneys are increasingly tempted to stretch the bounds of acceptable argument. One example is a personal injury lawsuit filed by a plaintiff injured at Disney World.[4] In closing argument the plaintiff's attorney characterized the defendant as "some nickel and dime carnival" throwing "pixie dust" in an attempt to mislead the jury. The jurors were told that the defendant's attorney thought that they were "fools" and "idiots."

With these limitations in mind, the following rules will guide you to an effective closing argument. First, the argument must be reflective of the true state of the evidence, grounded in reason and logic and delivered in a style which is genuine. To be sincere is more important than to be sensational.

Second, a well-organized presentation forms the foundation for persuasion. Keeping in mind that jurors remember information presented first (primacy) and last (recency). Likewise, redundancy reinforces important information and summary statements placed at the end of each segment help jurors keep attention. The use of rhetorical questions will guide jurors' search for answers. A well-placed rhetorical question is important because the jurors' attention is directed toward the answer. "Can any of us afford to allow this wrong to continue?"

Third, use established persuasive techniques. Tell a story that leads to your conclusions with analogies based upon everyday experiences the jurors can relate to. Did your examination of their star witness open a Pandora's Box? Is your opponent asking your client to perform a Herculean task? Don't assume that your jurors know their mythology. Instead, tell them a short, punchy version of the myth, and then show how it applies to your case. Idiomatic phrases are also an excellent tool for illustrating your point. Is it time for the defendant to "face the music?" Was the company "flying by the seat of its pants?" Is your opponent trying to "sweep something under the rug?"

Fourth, you also may try using the "immunization" technique. Forewarn the jury about your opponent's coming persuasive attempts so they can prepare themselves. Inoculate the jury by presenting them with a weakened form of your opponent's arguments and refuting evidence, which will build up the jurors' defense to your opponent's techniques.

Fifth, though it seems obvious, attack the opponent's case by highlighting the weaknesses. Any inconsistent or contradictory evidence, and especially a failure to deliver on promises made in opening, is fair game.

Sixth, use the physical evidence. Pick it up, show it to the jury. This will help increase the jury's attention and highlight important evidence.

Seventh, use jury instructions to explain to the jury the relationship between the evidence and legal standards. Not only should strong evidence be tied to the key legal instructions, but more straightforward arguments can be anchored to the court's instructions. For example, the standard jury instruction on judging the credibility of a witness is perfect to highlight evidence calling into question a witness's candor, or lack thereof. My favorite is the instruction regarding the different role of the court and the jury. "The Court and the jury have separate functions. You decide the disputed facts and I give the instructions of law. It is your sworn duty to accept these instructions and to apply the law as it is given to you." I like to reference this instruction as it allows me to empower the jury. It shows them how important their role is and how much power they are given in our system of justice – the only limitation is that they follow the law.

Here are my own ten commandments of closing arguments:

Do not read your closing; rely upon notes as little as possible.

Make eye contact with individual jurors repeatedly.

Don't repeat whole testimony, highlight the significant parts.

Emphasize your themes.

Avoid "lawyer speak."

Leave the podium, but move with a purpose.

Never say anything that is false.

Do not misstate the law.

Brush off objections; this is not the time to argue with opposing counsel.

Never EVER argue with the judge.

Closing arguments are the final opportunity attorneys have to persuade jurors. With all the evidence before the jury, attorneys are virtually unrestricted in their ability to persuade and show the jury how the evidence supports a verdict in favor of their client. Embrace the opportunity and enjoy the rewards.

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1. That said, there are some well-established limitations on closing arguments. Arguments for per diem pain and suffering damages cannot be made for the first time in the final (rebuttal) close of the plaintiff's argument. Jurors cannot be asked to put themselves in place of the plaintiff, commonly called the "golden rule" argument. Personal attacks on the opposing party or the opposing lawyer are improper, and personal opinions as to the credibility of a witness or litigant are prohibited.
2. Jackson v. Booth Mem. Hosp. 47 Ohio App. 3d 176 (8th Dist. 1988).
3. Pang v. Minch 53 Ohio St.3d 186 (1990)
4. Walt Disney World v. Blalock, 640 So.2d 1156 (Fla. 1994).

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John M. Gonzales

From the Bridge to the Ballroom

Lawyers With Artistic License

Seventh in the Series

By Heather G. Sowald

Photo by Susan Culler Soden

Stanley D. Ross has always had an interest in mechanical things, and finds beauty, among other things, in the design of war ships and race cars. He painstakingly fashions war ships – some from scratch, using wood, styrene and brass, and others from resin kits. Each creation varies in size but is generally about two to three feet long. Some of Stan's models include the 1941 USS California, Perry's flagship the U.S. Brig Niagara, and a model of the 1895 USS Olympia. Stan recently created a model of the French Lines' Ile de France and the French Liner Liberte, as each appeared in 1952. This latter ship model took him eleven months to build. He meets with a small group of ship model enthusiasts at the Westerville Library the third Saturday morning of each month. They call their group the Shipwrights of Central Ohio and they hold an annual show.

Stan is also fascinated with cars. He has owned vintage and race cars for the past 17 years, including a 1985 Porsche 962, that goes from 0 to 130 miles per hour in six seconds. That car won the LeMans in 1986 after reaching 245 mph, as well as two world championships. In 1992, he joined two others to form the Tasman racing team. That team was sold in 2000; and in 2003 and 2005 Stan had the opportunity to provide some formula Atlantic cars for Danica Patrick to drive in the Indy 500.

A Bexley High School graduate (1958), Stan received his undergraduate degree from OSU and his JD from the University of Michigan (1965). His father, Melvin, was president of the family company later known as Ross Laboratories.

Stan began his practice with the Vorys firm but was drafted by the army just three months before his 26th birthday. He was assigned chief prosecutor at Fort Knox, followed by a year as deputy staff advocate for the 7th infantry division. Subsequently, he served as a military justice instructor at the JAG school in Charlottesville, VA. And finally, capping off his military career, he was appointed as a military judge. Stan returned to private practice here with his brother in October, 1970, and later as a solo practitioner until he retired in 2006.

Always involved in the bar association, Stan served as the chair of several Columbus Bar committees and on the Board of Governors. He is currently a board member of the Columbus Bar Foundation and the Legal Aid Society of Columbus.

Always active in the community, he is a lifetime member of the board of Opera/Columbus and served for 17 years on the board of the Ohio Historical Society Foundation. He was a board member of Creative Living, and he and his wife, Jodi, have generously established a number of medical-related endowments.

Stan and Jodi were married in 1971. They have two children, Malcolm and Jennifer, who have, with their spouses, each kindly produced two grandchildren for them to dote upon. Clearly Stan is enjoying his retirement and time to spend with family, community, and hobbies. There are more cars to collect and ships to build in this enthusiast's future.

Barbara Letcher took up ballroom dancing "on a whim." With no formal dance background, about seven years ago she bid on ballroom lessons donated by Dance Plus in Grandview at a silent auction. A year later, she called and made arrangements for dance lessons. She never intended to extend the lessons beyond learning basic social dancing, but she enjoyed the lessons so much, she was hooked!

Barbara and her instructor, Alex Thomas, entered their first competition, the Windy City Open in Chicago, in August 2008. They competed as a Pro-Am couple in both smooth (waltz, tango, foxtrot and Viennese waltz) and rhythm (cha cha, rumba, swing, bolero and mambo) dances. Her favorite style is

smooth, saying, "There is nothing like a Viennese waltz when you want to feel like a princess." Of course, she also loves the ballroom dance costumes and all the bling that goes with them!

For the past five years, she and her partner have danced at the Ohio Star Ball, the largest Pro-Am competition in the world. This annual event is held in November at the Columbus Convention Center. Although the competition is fierce, the experience to her is amazing. She has also entered dance competitions in Chicago, Louisville, Cincinnati, and Michigan.

Barbara was really interested in Irish dancing long before her she took up ballroom, but she always assumed it was something, as a mature woman, she couldn't do. Then she had the good fortune to meet Joe Moriarty, the former male lead in Riverdance. Joe convinced her, over her protestations, that he could teach her Irish dancing. Not long after that meeting, she began lessons in Irish step dancing.

Originally from Chillicothe, Barbara said that her father always loved to dance and she was usually his go-to daughter for dancing at weddings. Although he had no training, she says he could manage a fairly good waltz and foxtrot.

Barbara received both her undergraduate (B.S. Allied Health Professions/Major: Medical Communications, 1979) and law degrees (1990) from OSU. She is one of the founding partners of Newhouse Prophater Letcher & Moots, and now serves the firm as Of Counsel. She is an certified specialist in labor & employment law, primarily representing employers – and, this year, is chair of the Columbus Bar Labor & Employment Law committee. She is currently a member of the board of the Human Resources Association of Central Ohio, as their government affairs manager. Barbara also serves on the boards of GETDOT (Legal Chair) – a networking group that raises funds to benefit children's charities, and the Stadium Scholarship Alumni Society (Social Chair) at OSU.

Her life is so much richer, Barbara reflects, because of the experiences she has had and the friends she has made through her interest in dancing. Next hobby? She thinks it might be learning to play the fiddle. For now, she will stick with dancing!

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Civil Jury Trials

By Monica L. Waller

Verdict: $172,289.26 ($123,908.94 in Compensatory Damages; $20,000 in Punitive Damages; $26,000 in Attorney Fees; $2,380.32 in Expenses). Conversion/Breach of Fiduciary Duty. Plaintiff Tony Saprano was a real estate agent for Defendant Columbus Ohio Homes and alleged that he earned commissions on the sale of six homes during 2005 and 2006. Defendant Jim Blackwood was the real estate broker for Columbus Ohio Homes and his wife Susan Blackwood ran the office. Mr. Saprano alleged that Mr. and Mrs. Blackwood represented to him that the commissions he earned would be held in trust for his benefit. Mr. Saprano alleged that the Blackwoods did not hold the commissions in trust but instead used the commissions for personal and business expenses including an adoption and office moving expenses. Mr. Saprano claimed that he was owed $72,249.54 in commissions. Defendants did not dispute that Mr. Saprano was owed the commissions but argued that the Blackwoods were not personally liable. Plaintiff's Expert: Robert Kutschbach. Defendant's Expert: Paul Roehrenbeck (CPA). Last Settlement Demand: Unknown. Last Settlement Offer: $10,000 to be paid over six (6) months. Length of Trial: 5 days. Plaintiff's Counsel: Todd H. Neuman and Nicholas R. Barnes. Defendants' Counsel: Paul Stehura. Judge Patrick Sheeran. Case Caption: *Tony Saprano v. Susan Blackwood, et al.* Case No. 11 CV 6460 (2012).

Verdict: $143,882.69. ($48,882.69 in Economic Damages; $95,000 in Non-Economic Damages; $0 for Loss of Consortium). Automobile Accident. On October 12, 2010 Plaintiff Dan Dodd was traveling westbound on Roberts Road when he was struck by an eastbound vehicle that was turning left. Mr. Dodd claimed a low back injury for which he underwent a lumbar laminectomy. Following the laminectomy, Mr. Dodd still complained of back pain so he had several injections by his orthopedic surgeon, Milan Herceg, M.D. He was improved, but still complaining of low back pain even after the injections. Mr. Dodd also alleged a plantar rupture of his foot for which he underwent surgery performed by Thomas Lee, M.D. The insurer of the vehicle tendered policy limits of $12,500. Mr. Dodd was insured by a policy issued by Defendant State Farm which included uninsured/underinsured motorist coverage with limits of $250,000 per person and $500,000 per accident and medical payments coverage with a $100,000 limit. State Farm paid Mr. Dodd $22,469 in medical payments. Mr. Dodd alleged that State Farm acted in bad faith in failing to fully compensate him. The bad faith claim was bifurcated and the trial proceeded on the issue of the nature and extent of Mr. Dodd's injuries and damages only. State Farm retained Dr. Gottesman to perform a records review. Dr. Gottesman agreed that the low back injury and lumbar surgery were related to the auto accident. However, he disputed that there had been any plantar rupture, opining that Mr. Dodd had plantar fasciitis from unrelated wear and tear. The jury was not told about payments already made to or on behalf of Plaintiffs. In closing, Plaintiffs asked for a verdict of approximately $259,000 consisting of $45,000 in medical bills, approximately $12,000 in lost wages, $25,000 for loss of consortium, $50,000 for future pain and suffering and the remainder for past pain and suffering. The jury rendered a verdict for $143,882.69 which was later reduced by the court for the $12,500 recovered from the tortfeasor and the $22,468.96 paid by State Farm under the medical payments coverage to $108,913.73. The case then settled in its entirety for $116,413.73, the extra amount consisting of a compromise on the claimed interest owed. Medical Specials: $45,000. Lost Wages: $10,197.67. Plaintiff's Expert: Thomas Lee, M.D. and Milan Herceg, M.D. Defendant's Expert: Martin Gottesman, M.D. Last Settlement Demand: $100,000. Last Settlement Offer: $65,000. Length of Trial: 4 days. Plaintiff's Counsel: Kyle L. Crane. Defendant's Counsel: James Gallagher. Magistrate Ed Skeens. Case Caption: *Dan Dodd, et al. v. State Farm Mutual Ins. Co.*. Case No. 11 CV 8517 (2012). Comment: Defense counsel indicated that the jury later explained it did not award any medical bills for the foot surgery, but added perceived costs for future back treatment into the future pain and suffering award. There had been no evidence of any future medical expenses.

Verdict: $40,959.84. Automobile Accident. On April 29, 2010 Plaintiff Tawna Farris was eastbound on East Main Street when her vehicle was rear-ended by Defendant David L. Ricketts. Ms. Farris claimed she sustained a herniated lumbar disk. Mr. Ricketts argued that the impact to the vehicle was minimal and disputed the extent of Ms. Farris's injury. Medical Specials: $40,959.84. Lost Wages: None presented. Plaintiff's Expert: Kelly J. Kiehm, M.D. Defendant's Expert: David Hannallah, M.D. Last Settlement Demand: $45,000. Last Settlement Offer: $40,000. Length of Trial: 2 days. Plaintiff's Counsel: Craig Scott. Defendant's Counsel: Belinda Barnes. Magistrate Myron Thompson. Case Caption: *Tawna Farris v. David L. Ricketts, et al.* Case No. 11 CV 2809 (2012).

Verdict: $17,500. Construction. Plaintiff James McAdams hired Defendant Keith Kirkwood, doing business as Woody's Quality Improvements to pour concrete footers for an addition to his home. Defendant Kirkwood subcontracted with B&D Concrete Footers, Inc. Mr. McAdams advanced $20,000 for the work and materials. Mr. McAdams alleged that the concrete did not appear to have sufficient consistency for the job when the footers were poured and he questioned B&D about its strength and composition. He alleged that B&D assured him that the concrete composition was correct. Mr. McAdams claimed that B&D proceeded to pour the concrete for the walls the following day without testing the strength of the footers. Mr. McAdams stopped B&D's work on the project. He alleged that testing revealed that the footers did not meet compression strength, that the basement walls were not properly cured and that the walls and footers B&D poured for the addition were higher than the home's existing footers and walls. Mr. McAdams demanded that B&D return and complete the work or provide the materials so that the work could be completed by others. Mr. McAdams claimed that B&D refused. B&D argued that Mr. McAdams refused to allow them to replace the footers before the basement walls were poured. B&D also claimed that the concrete used for the walls was properly cured. B&D argued that Mr. McAdams failed to mitigate his damages, waived any right to recover for deficiencies and assumed the risk of any deficiencies in the basement walls. Mr. McAdams claimed damages in the amount of $60,000 for breach of contract and breach of warranty or, in the alternative, $15,000 in unjust enrichment. Mr. McAdams settled his claims against Mr. Kirkwood and proceeded to trial against B&D. Plaintiff's Expert: Marc Montgomery, C.E and Justin Jacobson. Defendant's Expert: James E. Rosebrock, P.E. Last Settlement Demand: $60,000. Last Settlement Offer: $5,000. Length of Trial: 4 days. Plaintiff's Counsel: Eugene R. Butler. Defendant's Counsel: Brian K. Duncan and Bryan D. Thomas. Judge Nodine Miller. Case Caption: *James McAdams v. B&D Concrete Footers, Inc.* Case No. 10 CV 13186 (2012).

Verdict: $15,000.00 ($5,000 in Economic Damages; $10,000 in Non-Economic Damages). Automobile Accident. On November 23, 2008, Plaintiff Karen Thomas was struck by a vehicle driven by Defendant Jo A. Vogelsong while in the intersection of East Loop West and Gramercy Street in Columbus, Ohio. No detail regarding the nature of the injuries was available. Medical Specials: $8,215.00 (billed); $4,002.92 (accepted). Lost Wages: None. Plaintiff's Experts: William R. Fitz, M.D. (orthopedist) and Mary Ann Everhart-McDonald, M.D. (physical medicine and rehabilitation). Defendant's Expert: None. Last Settlement Offer: $8,000.00. Last Settlement Demand: $9,500.00. Length of Trial: 3 days. Plaintiff's Counsel: J. Scott Bowman Defendant's Counsel: Jeanette Potts. Visiting Judge Nodine Miller. Case Caption: Karen Thomas v. Jo A. Vogelsong, et al. Case No. 10 CV 15443 (2012).

Verdict: $12,305.47 ($11,305.47 in Economic Damages; $2,000 in Non-Economic Damages). Automobile Accident. Plaintiff Yolanda Arnold, a battalion chief for the Columbus Fire Departmen, was on duty riding as a passenger in a vehicle stopped behind a school bus on South High Street on March 19, 2009. The vehicle she was riding in was rear-ended by a vehicle driven by Defendant Thomas Mitchell. There was minimal property damage to the vehicles. There were scratches to the front bumper of Mr. Mitchell's vehicle and a cracked license plate cover. The City of Columbus vehicle had a cracked rear bumper cover. Ms. Arnold claimed soft tissue neck and back injuries and permanent partial disability as a result of the accident. She was off work for 6 months as a result of the accident. Mr. Thomas disputed the nature and extent of her injuries. Medical Specials: $10,000. Lost Wages: None presented. Ms. Arnold's wages were paid in full while she was off work pursuant to a collective bargaining agreement with the city. The city did not maintain any right of subrogation. Plaintiff's Expert: Charles May, D.O. Defendant's Expert: Kenneth Westerheide, M.D. (orthopedist). Last Settlement Demand: $35,000. Last Settlement Offer: $1,500. Length of Trial: 2 days. Plaintiff's Counsel: Craig P. Scott. Defendant's Counsel: Kevin J. Zimmerman. Magistrate Christine Lippe. Case Caption: *Yolanda Arnold, et al. v. Thomas Mitchell, et al.* Case No. 10 CV 18341 (2012).

Verdict: $5,116.72. ($5,116.72 in Economic Damages; $0 in Non-Economic Damages) Automobile Accident. On August 4, 2009, Plaintiff Aria Spivey-Ragland was westbound on East Broad Street when she was rear-ended by a vehicle driven by Defendant Timothy Pierce. The parties stipulated that there was $1,069.69 in property damage to Plaintiff's vehicle. The parties also stipulated that Mr. Pierce was negligent. Ms. Spivey-Ragland claimed that her body struck the steering wheel and dashboard causing injuries causing injuries to her head, neck and back. She also claimed injuries to her arms, shoulders, hands and other parts of her body. Ms. Spivey-Ragland alleged that she lost her job as a result of the accident and was unable to find employment for the next 4 years. Mr. Pierce presented evidence that Ms. Spivey-Ragland had faced issues at work and received a final written warning

Continued on page 30

Continued from page 29

6 days before the accident. Mr. Pierce also claimed that some of Ms. Spivey-Ragland's injuries were pre-existing. Medical Specials: $32,079.53 ($18,425.00 accepted as payment in full). Lost Wages: No figure presented. Last Settlement Demand: $35,000. Last Settlement Offer: $10,000 and a waiver of the $5,000 med-pay reimbursement. Plaintiff's Expert: Robert M. Hess, M.D. Defendant's Expert: Gerald Steiman, M.D. Length of Trial: 3 days. Plaintiff's Counsel: Arthur C. Graves. Defendant's Counsel: Joel S. McPherson. Judge Richard Frye. Case Caption: *Aria T. Spivey-Ragland v. Timothy J. Pierce, et al.* Case No. 11 CV 9351 (2012).

Defense Verdict. Breach of Fiduciary Duty. Defendant Brett Freifeld was the general manager of Plaintiff BOMA Bar of Modern Art, LLC. BOMA alleged that Mr. Freifeld breached his fiduciary duty by writing unsubstantiated checks in the amount of $83,000, by allowing large amounts of customer checks to be written off or voided and by stealing two profitable events from BOMA after his dismissal and re-booking them at his new place of employment. Mr. Freifeld maintained that the checks written were proper and legitimate business expenses, that he never misappropriated money and that he had no involvement in BOMA's loss of the two events following his dismissal. Neither party called any experts. Last Settlement Demand: $10,000. Last Settlement Offer: None. Length of Trial: 2 days. Plaintiff's Counsel: Robert J. Beggs. Defendant's Counsel: Frederick W. Stratmann. Judge David Fais. Case Caption: *BOMA Bar of Modern Art, LLC v. Brett Freifeld* Case No. 10 CV 17042 (2012).

2013 Year in Review

Based on data collected from the Franklin County Court of Common Pleas Office of the Jury Commission and the Franklin County Clerk of Courts Office, the following statistics have been compiled which provide a snapshot of civil jury trials for 2013:

Juries rendered verdicts on 43 civil actions in 2013. (By comparison, there were 59 civil jury trials in 2012 and 60 in 2011.) Fifteen of the 43 jury trials involved automobile accidents. Six of the 15 auto accident trials ended in defense verdicts.

The damages awarded to plaintiffs ranged from $4,500 to more than $230,000. In five of the eight cases in which damages were determined by the jury, the total damage award was over $10,000.

The average of the eight plaintiff's jury awards was $47,957. The mean was $15,143.

By comparison:

AUTO CASES	2013	2012	2011
Number of Jury Trials	15	23	33
Percentage of All Civil Trials	35%	39%	55%
Percentage Defense Verdicts	40%	17%	48%
Percentage of Verdicts over $10K	63%	58%	41%
Range	$4,500-$230,000	$3,700-$140,000	$1,500-$53,000
Mean	$47,957	$36,353	$14,046
Median	$15,143	$12,000	$8,513

Twelve cases involving breach of contract claims and other business disputes were tried.

Eight medical malpractice cases were tried to verdict in 2013. In five of those cases the plaintiffs were awarded judgments. The other three were defense verdicts. The jury awards ranged from $2,200 to over $2,860,000.

By comparison:

Three medical malpractice cases were tried in 2012. One was a hung jury. The other two were defense verdicts. Seven medical malpractice cases were tried in 2011. All seven were defense verdicts.

There were three employment cases tried. All three cases resulted in a verdict in favor of the employee on at least one of the employee's claims. Two of the cases involved allegations of discrimination. One case resulted in a verdict in excess of $500,000. The other resulted in a verdict in excess of $1,600,000.

Two premises liability cases were tried. Both resulted in defense verdicts.

One product liability case was tried. The case resulted in a $4.3 million verdict.

One defamation case was tried.

There was one jury trial involving a dispute over land appropriation.

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

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