Columbus Bar
Winter 2018

LAWYERS QUARTERLY

Winter 2018 Special Issue

THE FIRST AMENDMENT

In this issue, *Columbus Bar Lawyers Quarterly* examines the First Amendment: from fake news to hate speech, lawyer advertising to protests and religious freedoms to freedom of speech. This issue also explores the importance of networking, staying healthy and discussing diversity.

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A Message from the Executive Director

When Did Your **Future** Become About **Money?**

BY JILL SNITCHER MCQUAIN

Ever since the recession of 2010, we have noticed an uptick in the number of members asking for detailed summaries of ROI: "What's the return on my investment for membership dues; for advertising in the directory; for instructing at a CLE; for taking on leadership roles?"

I get it. Money is tight. And the proverbial "new normal" has made law firms rethink operations and management styles to reduce overhead and deliver more efficient client services. The CBA has done the same–we've reduced overhead by 50 percent and reduced staffing by 25 percent since 2010. We're all trying to do more with less.

Be that as it may, the ROI for membership dues is not an immediate gratification or one that can be solely defined by a dollar amount. Rather, membership dues are more akin to a 401(k) – something you invest in with expectations of future return. Membership is an investment in your career and in the future of the profession.

I hear story after story from our more seasoned members about relationships they established early in their careers. And now, so-and-so is a Judge; CEO of a million-dollar corporation; Managing Partner; in-house counsel at a fortune 500 company dolling out millions in legal fees every year; Attorney General. I also hear variations on the adage, "When I graduated law school, you did three things: take the bar; pass the bar; join the bar." Bar association membership was a given. It was the right thing to do – for your career, for your firm and for the profession. Law firm management expected their attorneys to join the bar association – employers paid the association dues; they encouraged their lawyers to attend committee meetings and events and to take on a leadership role.

So, when exactly did that change? When did bar association membership become a line item undeserving of investment without an immediate, demonstrable return on investment? Equally important is *why* did it change?

Today, the stories I hear lay blame on millennials – "they're just not joiners." To the contrary, we have one of the strongest millennial memberships in the country. Millennials are joiners. They seek connections and professional development. Too often there is a misinterpretation that millennials get everything they need online. What are we doing, as a profession, to coach them through building more authentic relationships to enhance their careers? Do you support their attendance at bar association functions? Do you strive to meet their expectations for personal and professional connection?

The law is still very much a people business. Careers can be made or broken by reputation alone. A recent study revealed that 75 percent of the reason lawyers are hired (either by a client or an employer) has nothing to do legal skills and everything to do with reputation and relationships. Relationships don't just happen. If they are truly authentic, they are years in the making; decades even. How do you put a dollar figure on that?

Sometimes, we can become so data driven that we lose sight of the big picture. Engaging with your colleagues through a professional association is priceless. Yes, you would expect me to say that as the Executive Director of the Columbus Bar Association. But it is so true. I hear it every day. Stories about people who would never be where they are but for the relationships they built, the leadership skills they developed and the opportunities they had to become a thought-leader – all through their involvement with the bar association.

I am really proud to lead the Columbus Bar Association. I think we do some pretty terrific things on behalf of our members, the profession and the public. Our staff is genuinely committed to making our members' lives a little better – professionally and personally.

We are the sum of our parts. Members need to take an active role in investing in their future and the future of others. If you are at the point in your career where you are enjoying the fruits of past investments, you have a lot to offer those who follow in your footsteps. Lead by example. Share your stories about the value of engagement. Pass on your legacy in the most meaningful way by investing in the future of those who succeed us.

Yes, I know money matters. But think about association membership as an investment in your career and your future. It's not a line item in your budget that should be questioned – it should be an automatic, just like your 401(k), bar registration fees, CLE and rent. And next time someone asks you what the return on investment is, explain that it's priceless.

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CBA Columbus Bar Association

President's Page

The Very Best of Our Profession:

Legal Aid, Pro Bono and Our Commitment to Access to Justice

BY LISA PIERCE REISZ

I love living in Columbus. I am amazed at the generosity of our community. We contribute our money and our time to the Faith Mission, the Mid-Ohio Food Bank, Nationwide Children's Hospital, Pelatonia, BalletMet, our churches, our alma maters and thousands of other worthy charities and organizations which make such a difference to countless individuals throughout our community.

As lawyers, we can do even more. Think back to why you went to law school. I will bet somewhere in your calculus was the belief that as a lawyer you could make a fundamental systemic difference in our community: not just helping the homeless, but addressing the problems that cause homelessness.

The Legal Aid Society of Columbus (LASC) embodies this belief. LASC was created by the Columbus Bar Association in 1953 to provide legal aid in civil matters to ensure access to justice for low income people and senior citizens in Central Ohio through advocacy, education and empowerment.

LASC is a truly remarkable organization. Although its budget has been slashed by almost 50 percent since 2008, with a very small, but incredibly dedicated group of talented attorneys and paralegals, LASC not only provides individuals with access to our justice system but is also breaking down systemic barriers to such access. Here are some highlights:

In 2015, the Center for Civil Rights Remedies documented four decades of national suspension trends between students of color and their white peers. The studies demonstrated a continuous widening of the discipline gap between black and white students and Latino and white students. This same gap exists in Ohio, where black students are suspended and expelled at rates three times higher than white students. In Columbus City Schools, black students were 2.5 times more likely to receive an out-of-school suspension, and three times more likely to be expelled than white students during the 2016-17 school year. Minority students with disabilities face even higher hurdles than those without. Between 2005 and 2013, Ohio students with disabilities received more disciplinary actions than their non-disabled peers. **Through its new School Equity Project, LASC attorneys are working to improve the educational opportunities for students**, and to train students, their families and school administrators on implicit bias, cultural competency and alternative discipline processes.

In March 2015, LASC filed an action against the State of Ohio's Director of Medicaid on behalf of several individuals being served by two nonprofits in central Ohio: the Community Refugee and Immigration Services and Community Development for All People. LASC claimed that certain individuals' Medicaid benefits were terminated or put at risk after Ohio failed to follow federal law and Medicaid regulations during the review process. Among other issues, LASC argued that Ohio failed to conduct certain Medicaid renewal procedures and did not adequately notify recipients as to why coverage was being terminated and how to appeal. In a settlement with the State of Ohio, **approximately 154,000 Ohio residents had their Medicaid health benefits restored and their eligibility for the program re-checked**.

On April 4, 2016, **LASC implemented a Medical-Legal Partnership (MLP) with Nationwide Children's Hospital (NCH)**. The MLP aims to identify health-harming legal needs, including domestic violence, housing and food insecurity, and unsafe and unhealthy housing, among low-income NCH patients that can be addressed by LASC attorneys. In its first year, the MLP screened 696 patients from NCH primary care clinics and its Teen and Pregnant Clinic. LASC attorneys provided eight trainings to NCH staff and opened 317 cases in the areas of housing, family law, public benefits, consumer, education and employment. In 2017, LASC expanded the MLP and partnered with care clinics at each of the hospital systems in Columbus to use legal remedies to fight infant mortality in Columbus's most vulnerable populations.

On March 1, 2017, LASC started the Tenant Advocacy Project (TAP). Since its inception, TAP volunteers have worked on more than 1,000 cases (including both full representation as well as brief advice and referral work). This includes helping individuals navigate eviction hearings and/or negotiate resolution of their eviction cases, often keeping an eviction – which can contribute to homelessness – off the individual's credit report. As a part of this project, LASC has placed a full-time staff attorney in Franklin County Municipal Court each day to work with TAP volunteers. This full-time presence has enabled LASC to track issues, identify trends and address problematic practices which have started to level the playing field for tenants in these actions.

Think back to why you went to law school. I will bet somewhere in your calculus was the belief that as a lawyer you could make a fundamental systemic difference in our community: not just helping the homeless, but addressing the problems that cause homelessness.

LASC currently sponsors 17 different, monthly Brief Advice clinics at various locations throughout Central Ohio. These clinics bring legal services directly to people in poverty. Clinic volunteers meet with individuals to analyze problems, identify community resources and offer legal advice on an array of subjects. Notably, these clinics provide an important education component to individuals, such as how to avoid evictions or how to escrow rent in a poor living conditions case, which can often prevent future legal problems.

Personally, I have had the privilege of serving on the LASC Board for almost 15 years. The attorneys and volunteers who serve LASC clients are simply inspiring. They are an example of the very best qualities that our profession has to offer. They possess a unique combination of traits: skilled advocacy, a passion for facilitating systemic change and genuine compassion for the people they serve. I believe I am a better lawyer and a better person just for having the chance to be around them.

Therefore, I'd strongly urge every CBA member to support LASC and its mission. Here is how you can help:

Consider making a charitable donation to LASC this year. Like numerous organizations, LASC's funding has been significantly impacted by cuts in funding. Therefore, monetary donations to LASC help support numerous programs that are vital to LASC's mission.

Volunteer your time and skills to an LASC pro bono project. There are a variety of different projects that may be a good fit in terms of your practice area, availability and interest. LASC provides training for every project. It can be great practical experience for a new lawyer, a feel-good experience for the seasoned lawyer and, from a practice management standpoint, a unique opportunity to obtain CLE hours for all attorneys since pro bono work now counts for CLE hours in Ohio! The following are a list of LASC's current pro bono projects for your consideration:

- Housing Project: representing tenants in eviction actions.
- Consumer Project: representing consumers sued for credit debt filed by debt buyers.
- Unemployment Compensation Appeal Project: representing clients who are denied unemployment compensation or face an appeal by a former employer.
- ICAN Escrow Project: representing tenants in Franklin County escrow actions (to improve housing conditions).
- Chapter 7 Pro Bono Bankruptcy Project: representing debtors filing Chapter 7 bankruptcies in the Southern District of Ohio.
- Seniors Referral Project and PACO Wills Clinics: preparing and executing simple wills and advance directives.
- Low-Income Taxpayer Clinic: representing individuals involved in tax controversies with the IRS.
- School Equity Project: representing children and families navigating the disciplinary and/or IEP process.
- Legal Aid Reduced Fee Referral Project: representing clients in uncontested divorces, dissolutions, unbundled domestic matters and Chapter 7 bankruptcies.
- Brief Advice and Service Clinics: meet with individuals to analyze problems, identify community resources and offer legal advice on a variety of topics.
- Clean Slate Clinics: assist individuals with criminal record-sealing and Certificates of Qualification for Employment.
- Other Pro Bono Opportunities:
  - Pro Bono Mentoring: experienced attorneys mentoring new practitioners.
  - Impact Litigation Referrals: firms partner with LASC on larger-scale affirmative cases that have the potential to benefit a large number of low-income individuals.
  - In-House Volunteer Opportunities: volunteer attorneys commit to a regular schedule during LASC business hours to support the work of the LASC teams for a period of at least three months.

If you would like any additional information about these projects or are interested in volunteering your time, please reach out to Dianna Parker Howie, Managing Attorney, Pro Bono Program. She can be reached at (614) 737-0184 or dhowie@columbuslegalaid.org. Together, as lawyers, we can work to guarantee access to justice for every individual and begin to address and eliminate the root causes of poverty in our community.

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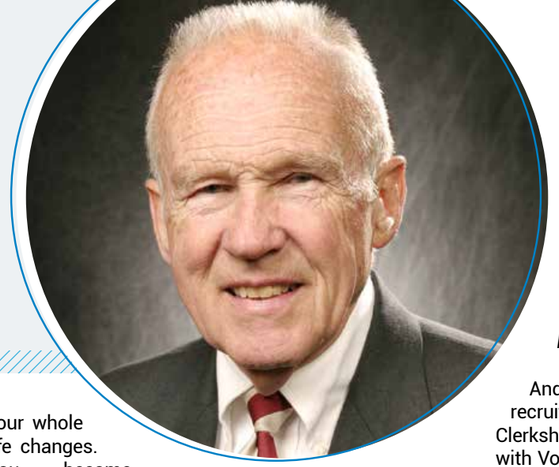
Winter Feature

Norton Webster:

30 Years of Service, a Lifetime of Impact

BY KELSEY POHLMAN



Do you ever get excited to see someone you don't know very well, just because of all the good things you heard about them? That's the way I felt when I walked into Nort Webster's office to interview him about his legacy. We had talked on the phone, we had shaken hands once, but no one had prepared me for the hour and a half I spent engaging with one of the kindest people I'd ever met – and one who had a lot of stories to share.

Webster started his life like most men who grow up in the inner-cities. He went to Fairfax School in Shaker Heights, Ohio and his father owned a construction business before it went under during the Great Depression.

"I had two parents who couldn't go to college for economic reasons," Webster explained. "But they were hell-bent on seeing that their two children got an education."

Webster's parents didn't do it all on their own. After moving to Columbus for high school, he worked as a soda jerk at Hudson's Pharmacy (now Crosby's Drugs) all the way through law school.

"Some say I peaked then and should have stopped," Webster joked. "When I started at Ohio State, I just turned 17 and all the men were coming back from World War II. I went through college with only one date."

Little did Webster know he'd be married just 15 years later with three beautiful children – and an amazing career to boot. While his daughter Diana says, "He never did have an ego." She's not afraid to boost it, either.

"My father is perfect. I can't think of anything, any area in which he needs improvement," Diana doted. "He's always calm, always attentive, fair, funny, informed, interested, interesting. Never complained about anything as far as I can remember."

And while many attorneys often get stereotyped as rarely being home and around to enjoy their children's lives and upbringing, Webster shares quite the opposite story.

"Having a family never intruded on my time; I never missed a meal," Webster proudly stated. "Once you have a family, your whole life changes. You become involved in what your children are doing and never get dis-involved. You do what the family wants you to do."

A strong sense of duty is not a unique thing for Webster to feel, either. After law school, he worked as the Assistant to the Executive Secretary with the Ohio State Bar Association (OSBA) for two years, then moved over to the law firm route: first with McFadyen & Swisher, then a 25-year stint with Folkerth, Calhoun, Webster, Maurer & O'Brien.

But as Webster became more involved with additional organizations outside of his firm, like the CBA and OSBA, he realized something recurrent throughout the practice of law.

"When I was OSBA President in 1968, 500 attorneys were sworn in. Of those 500, only five were African American and there were only three or four women," Webster explained. "Today, African Americans constitute 10 or 11 percent of new attorneys and women make up about 40. Women have been able to ride the horse of diversity, but African Americans are still in the back of the bus."

In spite of low numbers and lack of opportunity for men and women of color, Webster has always been at the forefront of this initiative, fighting for those in the back. Approximately 50 years ago, he gave his Annual Report as OSBA President. His promotion of diversity has never faltered:

"...There is one area in which no committee is going to be able to solve our problem. It is an area in which you and I as individuals...are going to have to work on an individual basis. I have been concerned for some time over some of our shortcomings as they relate to race relations, not only among the public at large, but within the legal profession itself... I am not a rabble rouser, but I am the type of the guy who is disturbed when I learn...that in some of our metropolitan areas as it was well nigh impossible for a negro lawyer to obtain office space in what you might term first rate downtown office buildings. I am the type of guy who is disturbed over the fact that relatively few negroes are entering the legal profession..."

And 18 years after his inspiring speech, Judge Guy Reece recruited Webster to join him in starting the Minority Clerkship Program (MCP). By this time, Webster had been with Vorys, Sater, Seymour and Pease LLP for two years and when he asked Managing Partner John Elam if Vorys wanted to be involved, he jumped at the chance.

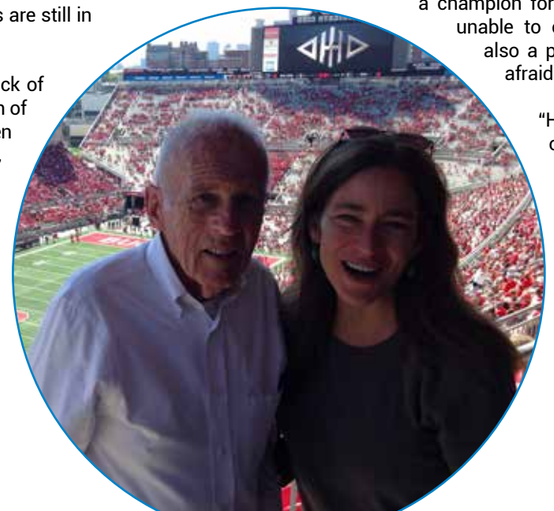
Vorys, along with eight other firms, were the first employers involved with the CBA's Minority Clerkship Program. Vorys involvement with MCP allowed them to become, as Nort says, a "pioneer for diversity." To date, MCP has placed 770 minority law students in summer clerkships.

While Webster was assisting an astounding MCP Team to help the Columbus legal community to become more inclusive, he met Carl Smallwood, fellow Vorys attorney and who Webster dubs as "one of my heroes." But the admiration goes both ways.

"Nort's humility is rare, and he made me feel instantly comfortable and curious about who he was," Smallwood said of starting his career at Vorys. "Nort's contributions to diversity in the legal profession in Ohio are profoundly important. He is bold, visionary, persistent, optimistic... Every person Nort met, every organization he served, every group he led — became better because of that interaction. I would like to leave that kind of legacy!"

Jocelyn Armstrong, CBA Director of Diversity, also noted Webster's impact on the profession: "Mr. Webster is a fine attorney and genuine person. He has long been a champion for diversity and inclusion. He understands that a diverse profession is successful and sustainable."

And like many have said before, not only is Webster a champion for those who are sometimes unable to champion themselves, he's also a positive person – who's not afraid to crack a joke.



"He's got such a good sense of humor. He doesn't tell jokes all the time, but when he does, part of his delivery is he laughs right at them," Diana said while laughing herself. "I even put a flower crown on his head [this past summer] and he let me take a picture."

Webster's resilience is also one of his notable attributes. He retired 15 years ago, but hasn't quite left the office. Former Managing Partner Russell Gertmenian, who retired in January, is in awe of his commitment to the firm.

"Nort still regularly uses his office at the firm and is one of our greatest cheerleaders in this community. He continues to exemplify the values of professionalism, integrity and commitment to our clients that lawyers all too often seem to have morphed away in the face of the growing business and market pressures," Gertmenian praised. "Nort constantly reminds us through his actions that the law is still a profession and not purely a business."

When I interviewed Webster for this article, he had recently been awarded the OSBA's Bar Medal. He was also the recipient of the CBA's Professionalism Award in 2007. But, he's quick to cut the admiration.

"This wasn't all Nort Webster," he said seriously. "I got the award for 30 years of service, but we ought to be giving out 30 awards." Although his humility is a strong-point, many of his colleagues know Webster just as I do: a person you've heard a lot of good things about and you're always excited to see.

"I truly do not know of one person in the Columbus legal market who is more highly respected than Nort Webster. And if you know Nort, you love Nort," Vorys Managing Partner Michael Martz acclaimed. "He is always quick with a kind word or a good joke and he also cares very deeply about the growth and development of young lawyers both as people and as lawyers. Our legal community is better today because of the many contributions of Nort."

"I truly do not know of one person in the Columbus legal market who is more highly respected than Nort Webster. And if you know Nort, you love Nort."

-Vorys Managing Partner Michael Martz

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What If You Threw a Party and

Nobody Came?

"We can spend all the time in the world creating opportunities to build relationships. But relevance is a two-way street, and you've got to show up. Your success in business in general will be built on relationships. When opportunity is presented, you need to take advantage of the same — or risk the consequences.

BY HON. CHARLES SCHNEIDER

Note to young lawyers everywhere: your practice will be built on relationships – not on grade point averages, Phi Beta Kappa keys or other honors you may have earned. I am not as naive as your law professor who told you "grades do not matter – it is only your love of the law." Remember that?

After you get your first position and try to build or start a practice it will be relationships that matter. A recent national survey backs this up – 75 percent of a lawyer's success has nothing to do with legal skills; rather people skills, professionalism and accountability are what appeal most to clients and employers.

When you get to court, no one is going to ask or care about your grade point average. Your relationship with the judge, court personnel (especially the bailiff) and opposing counsel will control the day, and determine success/failure for your client and your future.

Relationships do not just happen. You have to build them by taking advantage of opportunities when presented. Let me tell you a real story.

What if you threw a party and no one came? We have all heard that cliché before. It happened to me not once, but twice.

As a CBA Board member we are asked to reach out to new members and welcome them to the Bar. Periodically, we are each assigned about eight new members. The first time I received my assignment, I decided to go the extra mile and invite the new members to join me for breakfast – as in a free breakfast with a sitting judge.

Two people showed up.

I recently received a new assignment of eight new members. Not to be dissuaded and being a "glass half full" person, I extended the breakfast invitation again. This time, except for Jill, the CBA Executive Director, no one (as in not any) showed up. I'm glad Jill showed; I enjoy her company and it meant that I got the time, date and place correct.

This was not about me. These young lawyers were given the opportunity not only to meet with a judge in a "stress free zone," which does not happen often, but to meet several other lawyers in a friendly environment. This was an opportunity to build relationships. Maybe exchange business cards and meet again. You never know when you might be in court with one of the lawyers you met at breakfast. Maybe the case is in front of me. Lots of things happen in the courtroom that are not in those law books. Sorry, professors.

Groups like the CBA spend a lot of time discussing how we can and need to be relevant to young lawyers. That is not easy for someone like me to comprehend. When I passed the Bar over 40 years ago, joining the bar association was just what you did. It was a given; there did not have to be a reason. I get it — that may not be the case now. I have written this from the legal perspective because that is what I know. I am sure that this applies to other professions and business organizations.

What has not changed, however, is that relevance is a two-way street.

I gather this scenario is not unique to lawyers. While I'm not one to jump on the bandwagon of denigrating the millennial generation (or any generation), I do appreciate that they have grown up in a world where face-to-face contact is the exception. Most communication among younger generations is electronic — whether by text, social media, photos or email. (Although I am told that email is also becoming passé.) These electronic communications do make us more efficient, and allow us to have a traceable record. But, they should not be a substitute for human interaction. Instead, these virtual introductions should be viewed as an opportunity to alleviate some of the social anxiety.

The likes of my generation owe it to those behind us to help them understand the significance of relationships and the value of face-to-face connections. Live introductions can be uncomfortable and cause anxiety when you're not used to it. But avoiding these uncomfortable situations is not the answer. We're all on the internet; we engage in social media conversations and listservs. Use these virtual relationships as the foundation for breaking the ice to create lifelong relationships.

Many of us serve as mentors. Use these mentoring opportunities to coach your understudies on how to overcome the fear of face-to-face introductions.

We can spend all the time in the world creating opportunities to build relationships. But relevance is a two-way street, and you've got to show up. Your success in business in general will be built on relationships. When opportunity is presented, you need to take advantage of the same — or risk the consequences.

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Have the Tough Conversations

About Diversity and Inclusion

BY LINDSAY FORD ELLIS

For the past several years, I have been asked to serve as a panelist on the topic of diversity and inclusion in the legal profession. This is not an odd request because I currently serve as the Immediate Past-President of the John Mercer Langston Bar Association and have served as President and President-Elect for the past several years. Moreover, I've served as Co-Chair of the Minorities in the Law Committee for the Columbus Bar Association. As you can see, I'm always delighted to converse about how we can continue to increase and retain diverse talent in the Columbus legal community.

A few months ago, I was asked to serve on a panel about — you guessed it — diversity and inclusion in the legal profession in the context of my role as in-house counsel. I agreed, but immediately thought about all of the panel discussions that were taking place about this topic. In these conversations, we only seemed to be scratching the surface by responding to a moderator with a list of prepared questions. We were not engaging our audience and really discussing the challenges that hiring partners and managers face in finding and retaining diversity.

That is when another thought struck me: as apparent as it may seem, the topics of diversity and inclusion are not a comfortable space for everyone. I do not mean that people are not committed to increasing diversity and inclusion in the legal profession. I have found that having an open and honest dialogue about diversity and inclusion is not as easy for others as it is for me. The topics of diversity and inclusion involve discussions of race and ethnicity – obviously sensitive topics. No one wants to say the wrong thing for fear of being deemed racially insensitive. My guess is that many people choose to remain silent on the topic. This fear stymies truthful dialogue about diversity in the legal profession. The fear results in a lack of candor with panelists merely reciting their thoughts and the audience members silently listening. With each panel convened to "discuss" diversity and inclusion, I become more frustrated because there is no real progress made toward diversity and inclusion when there is not honest discussion.

I racked my brain trying to think of a way to make the panel more of a dialogue. I was struck by how ironic it is that a group of professionals trained to have adversarial and spirited debates regarding controversial and complex issues struggle to talk openly about diversity and inclusion. I do not mean this as a slight, but as an acknowledgement of a reality. I realized what was missing in all of the previous panel discussions — no one had ever publicly acknowledged that talking about the subjects of diversity and inclusion are difficult. If we recognize and state that we are in an uneasy space, then more people might feel inclined to engage because they would feel that they are in a safe space where they can be vulnerable and transparent.

Taking my seat on this recent panel, I knew that I did not want to have the same "conversation" that usually became a lecture. When it was my turn to speak, I thanked the audience, full of hiring partners and managers, and told them that I appreciated their commitment to diversity and inclusion. Clearly, the fact that they were in the room to discuss diversity and inclusion means they are invested. I also decided to address the fact that diversity and inclusion are uncomfortable topics. When we enter the conversation, we are asking people to stretch themselves in ways they are not used to being stretched. We have to acknowledge that we are pushing people outside of their comfort zones and that is okay. Recognizing the discomfort fosters a safer space for a more open and honest dialogue.

At that moment, I felt like a weight lifted in the room. Just recognizing and acknowledging that we are operating in an uncomfortable space helped make the panel discussion a true dialogue. The moderator and panelists were not the only people who spoke. Audience members chimed in, asked questions and offered their own personal anecdotes. When the panel discussion ended, I felt that we went beyond the surface for the first time. I did not have the same feeling of frustration that I had after previous panel discussions. This was, by far, the best discussion because everyone left the room with new information and ideas to increase and retain diverse legal talent.

The topics of diversity and inclusion are not easy topics to address, but we can decrease the difficulty by acknowledging and recognizing that leaving our comfort zones is okay. Recognizing and verbalizing that we are entering uncomfortable territory actually creates a safe space where everyone can speak openly and candidly, which leads to progress and solutions. Regardless of how daunting it may seem, we need to have the tough conversations about diversity and inclusion if we want to progress to a diverse and robust legal community in central Ohio.

"The topics of diversity and inclusion are not easy topics to address, but we can decrease the difficulty by acknowledging and recognizing that leaving our comfort zones is okay.

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Upcoming Events

What's Happening @ the Bar?

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WINTER 2018

january 17

NEW! Committees and Cocktails • 3rd Wednesdays, 5-7pm
This free monthly event will give members from all committees and practice areas a chance to meet, network and make valuable business contacts in a casual, relaxed atmosphere. We'll provide beer, wine, soft drinks and light hors d'oeuvres. RSVP to donna@cbalaw.org.

COMMITTEES and COCKTAILS
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january 26

6th Annual MLK Jr. Civil Rights Symposium (6.0 CLE Hours)
"50 Years Later: The New Civil Rights Movement"
Join us for compelling discussions on the evolution of the Civil Rights Movement. Learn how the current U.S. Supreme Court docket will shape our future.

february 1-2

Real Property Law Institute 2018 (10.5 CLE Hours, with 2.0 Prof. Conduct)
The annual Real Property Institute is back, with instruction on title companies and closings, affordable housing issues, legislative updates, a case study of The Ohio State University Campus Master Plan, and more.

february 1

Community Cultural Conversations
The topic for this conversation is "Intersectionality and the Value of Humans," and will be facilitated by Kimberly Brazwell, Author of Browning Pleasantville (book signing to follow presentation). This event is free and open to the public.

february 3

Rock 'n Bowl 2018
The Columbus Bar Foundation will be a presenting Sponsor for Rock 'n Bowl 2018 at Columbus Square Bowling Palace, with proceeds to benefit The Center for Family Safety and Healing at Nationwide Children's Hospital. Last year we raised over $100,000 for the Center.

february 7-9

CBA Picture Days: Update Your Headshot
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february 19

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Taking the First Step:
Networking for New Lawyers

BY CAITLYN NESTLEROTH JOHNSON

"There are no strangers here, only friends you haven't yet met."

– William Butler Yeats

One of the many benefits you gain from being a member of the Columbus Bar Association is the opportunity to network with other members. As Co-Chair of the New Lawyers Committee, I attend many CBA-sponsored networking events, but fellow young lawyers frequently tell me at these events that they feel they "don't know how to network."

The funny thing is that by attending such networking events, they have already taken the crucial first step in networking: putting yourself in a situation to network. Unfortunately, there is no magic formula for networking, but in my opinion, just getting to a networking event is often the hardest part. If you are hesitant to attend a "formal" networking event because you think you will not know anyone, try these tips to get started as well as avoid some common pitfalls.

First, you may already know the organizer of the event, but if you don't, find them and introduce yourself. This is especially easy at CBA committee meetings because the chair often greets you at the door or is at the front of the room with the speaker. Once you have introduced yourself, ask if they will introduce you to someone else. Do not be afraid to make this introduction! The organizer has likely put in considerable time and energy and will be grateful you are there and interested in their event. Trust me, I have organized enough events to assure you that "fear of low attendance" is a real phobia. While they will have multiple demands on their attention, welcoming new attendees should be a priority for them.

Second, at most formal networking events, there will be a registration or check-in table, and the volunteers at that table certainly know someone (and probably know many someone's) at the event. Ask if they will introduce you. For example, Donna Sweet works registration at nearly every CBA event and she knows almost every CBA member. If you ask her, she will point you in the direction of the chair or other frequent attendees like me.

Another trick I use is to try to review the list of attendees before an event so I can look them up and match their names with their photos. I am terrible with faces, so I use the internet to help me, as most attorneys have a firm bio or a LinkedIn profile. I constantly download v-cards or create contact cards for people I meet or think I will meet. I also download headshots when they do not automatically download with the v-card. I find that just five minutes of preparation before an event can make a huge difference. The more prepared you are, the less nervous you should be.

A few minutes of preparation may also help you avoid an awkward encounter with someone you forgot you had met. Granted, this happens to all of us, so if you are on the receiving end of it, I suggest you act graciously. I was recently at an event where I gaffed on having met someone and unknowingly "re"-introduced myself. The person on the receiving end took none too kindly to my reintroduction, turned up her nose and called me out on it, making it needlessly uncomfortable for me and others in the group. Don't be this person. We are all human and make mistakes. If you find yourself on the receiving end of a reintroduction, gently remind the other person when you may have met. This prevents embarrassing the other person and generally makes you look good to everyone involved.

Also, be judicious in how you commit your time to networking events. Speaking as a host, it is extremely disappointing to plan an event and be left with a number of unclaimed name tags. It may also waste food, money and other resources. Emergencies happen, but if they come up for you frequently, they can impact your reputation. If you are unsure about your availability, it may be prudent to postpone responding until you are sure you can attend rather than take a spot from someone who actually will. And if you do have to cancel unexpectedly, follow up with a brief email apology and prioritize making it to the next event.

"Networking is about interacting with people. If you are interacting with people, you are networking. You do not have to be at a "networking event" to make connections."

Keep in mind, however, that networking is not just about formal networking. Networking is about interacting with people. If you are interacting with people, you are networking. You do not have to be at a "networking event" to make connections. I have lost count of the number of people who have asked me about being an attorney simply because I wear my old law-school t-shirts to yoga class. I gained a mentor in a retired attorney who regularly takes the same class and one day struck up a conversation because of those t-shirts. Become involved in things that interest you, and you will network in the best way: without realizing you are "networking."

Finally, someone does not have to be an attorney to be important to networking. From the volunteers working the registration table to the receptionist in the lobby to the people in the elevator after a meeting, treat everyone the way you treat those with whom you intend to network. This includes at your own workplace. You are probably told if a client or opposing counsel is rude to a coworker, and you do not want to be someone who is characterized that way by others. Trying to have positive interactions with everyone you encounter is extremely beneficial to network building.

The Columbus Bar Association is a great way to get involved in the Columbus legal community and network with other members. Now that you have some basic steps to practice, get out there and start networking in the new year!

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Legislative Update:

How Two Ohio House Bills Could Affect Your Clients (And Their Dogs)

BY ALEXIS V. PRESKAR

Among bills regarding heavily debated topics like energy, education and civil rights, the Ohio Legislature is also considering two bills with seemingly lower stakes. After all, who doesn't like charities and puppies?

Both bills have little to no cost, per their local impact reports, and could allow more freedom for Ohio business owners in both legal structure and day-to-day operations.[1] Here is a look at how 131st G.A. H.B. 545, authorizing the creation of benefit corporations in Ohio; and 132nd G.A. H.B. 263, allowing dogs on restaurant patios; may affect Columbus businesses and residents.

Public Benefit Corporations

Public benefit corporations ("B Corps") are "corporations created with a purpose of creating a general public benefit."[2] While that description may seem vague and not very different from the general purpose of a corporation, B Corps make more sense when considering potential liability for "regular" corporations. Corporations can be formed for any lawful purpose, but they have a duty to their shareholders, and a "beneficial purpose" for the general public is not typically considered a benefit for shareholders.[3] In the traditional scenario, if a corporation focuses on creating a positive impact for the community to the detriment of shareholders, it can face liability.[4] But since a B Corp explicitly writes that beneficial purpose into the articles of incorporation, the company can explore that purpose without the same shareholder risk.[5] However, the Ohio Legislative Service Commission Bill Analysis for B Corps is quick to point out that "[a] beneficial purpose does not prevent a corporation from pursuing the other purposes for which it was formed, including pecuniary gain, and [g]enerally, no purpose has priority over another purpose."[6] The beneficial purpose covers lots of ventures such as art, music, education, medicine and religion.[7]

The bipartisan bill would create a new section under Ohio's general corporate law — R.C. 1701.96 — allowing corporations to register as B Corps.[8] The bill was introduced by two Cincinnati Representatives in 2016: former Representative Denise Driehaus (D) and Representative Jonathan Dever (R).[9] In November 2016, the bill was referred to the Commerce and Labor Committee, and doesn't appear to have moved much since.[10] As of September 2017, the Ohio State Bar Association both endorsed the bill and called it "priority legislation".[11]

Rather than simply paying lip service to "doing good," businesses who elect to become B Corps put their money where their mouth is and commit, but are not legally required, to share a certain amount of profits with a charitable cause.[12] These blended entities make sense for businesses who still desire to turn a profit, but who also want to have some accountability for their generosity. Not only does this mixture feel honorable, it is also attractive to investors who want to be seen as investing in "ethical" companies while still having the potential to receive dividends. However, Ohio's proposed law does not impose a duty on B Corps to their beneficiaries, nor are they liable for any damages "for any failure to seek, achieve, or comply with any beneficial purpose of the benefit corporation."[13] With that said, a B Corp may be subject to equitable remedies such as specific performance for failing to seek or comply with their beneficial purpose.[14]

> **"Even though these bills may not have the same wide-reaching effect of health care or tax reform, it is heartening to see good examples of bipartisan leadership and lawmakers working on issues that matter to the public in this time of political turmoil.**

Some Columbus-based companies are already "certified" B Corps, but this is not a legal designation.[15] Instead, the "B Lab®," a nonprofit which supports B Corps, requires companies to meet certain specifications, including a legal component.[16] While B Lab® is careful not to provide "legal advice" to its users, it recommends businesses in states like Ohio where B Corps are not yet an option to amend their governing documents to include beneficial purpose language.[17] Jeni's Splendid Ice Creams explains that it is a certified B Corp given its commitment to fair trade and minimal environmental impact.[18] And while central Ohio boasts many craft breweries, Commonhouse Ales is the first to become a certified B Corp, thanks to its donation of sales proceeds to local charities.[19] But lawyers should not feel like the food and beverage industry gets to have all the fun; Luftman, Heck & Associates LLP has been a certified B Corp since 2010 – proving that lawyers can put their creative minds to charitable use.[20] The firm states that it seeks to help low income individuals navigate difficult challenges.[21]

Pups on Patios

The much more hotly debated H.B. 263 would allow restaurants to permits pups on patios, which is currently a violation of the health code.[22] While it may seem like lots of restaurants are already dog-friendly, establishments that allow non-service animals on their premises currently risk being downgraded by the health department.[23]

Representative Laura Lanese (R, Grove City), introduced H.B. 263, and Senator Bill Coley (R, Liberty Township) introduced a similar bill in the Senate.[24] It now sits and will stay in the Economic Development, Commerce and Labor Committee, but the issue has already been contended in the court of public opinion.[25] Advocates of the bill cite the positive effect on businesses, pets and owners of allowing dogs on patios.[26] Businesses benefit by gaining the patronage of animal lovers, and can also host adoption events to help dogs in search of a home.[27] Opponents argue that allowing dogs on patios is unsanitary, unfair and unworkable for those with allergies, and could be dangerous if a dog is not properly controlled.[28] The Franklin County Public Health Department and the Ohio Restaurant Association are in favor of the bill, though the Health Department has additional concerns including signage and waste disposal.[29]

Even though these bills may not have the same wide-reaching effect of health care or tax reform, it is heartening to see good examples of bipartisan leadership and lawmakers working on issues that matter to the public in this time of political turmoil.

[1] *See* Documents for H.B. 545 and H.B. 263, available at https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA131-HB-545 and https://www.legislature.ohio.gov/legislation/legislation-documents?id=GA132-HB-263, respectively.
[2] *See* Ohio Legislative Service Commission Bill Analysis of H.B. 545 at 2, available at https://www.legislature.ohio.gov/download?key=6250&format=pdf.
[3] *See id.*
[4] *See id.*
[5] *See id.*
[6] *See id.*
[7] *See id.*
[8] *See* Text of H.B. 545, As Introduced, at 46.
[9] *See* H.B. 545 Status, available at https://www.legislature.ohio.gov/legislation/legislation-status?id=GA131-HB-545.
[10] *See id.*
[11] *See* OSBA's Weekly Legislative Report for Sept. 14, 2017, https://www.ohiobar.org/NewsAndPublications/News/OSBANews/Pages/OSBAs-Weekly-Legislative-Report-for-Sept--14-2017.aspx.
[12] *See id.* Text of H.B. 545, As Introduced, at 46.
[13] *Id.* at (B).
[14] *See id.*
[15] *See* B Lab, https://www.bcorporation.net/community/find-a-b-corp?search=&field_industry=&field_city=&field_state=Ohio&field_country=.
[16] *See* B Lab, How to Become a B Corp, https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp.
[17] *See* B Lab, Legal Roadmap, https://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/legal-roadmap.
[18] *See* B Lab, Jeni's Splendid Ice Creams, https://www.bcorporation.net/community/jenis-splendid-ice-creams.
[19] *See* B Lab, Commonhouse Ales, https://www.bcorporation.net/community/commonhouse-ales.
[20] *See* B Lab, Luftman, Heck & Associates LLP, https://www.bcorporation.net/community/luftman-heck-associates-llp.
[21] *See id.*
[22] *See* Ohio Legislative Service Commission Bill Analysis of H.B. 263 at 2, available at https://www.legislature.ohio.gov/download?key=7469&format=pdf.
[23] *See* Pets on patios? Health Department says no, Kayla Beard and Sheridan Hendrix, The Columbus Dispatch, available at http://www.dispatch.com/news/20170515/pets-on-patios-health-department-says-no (May 16, 2017).
[24] *See* Ohio Legislative Service Commission Bill Analysis of H.B. 263 at 1, and Bills in Ohio legislature would allow dogs on restaurant patios, Jim Seigel, The Columbus Dispatch, http://www.dispatch.com/news/20170822/bills-in-ohio-legislature-would-allow-dogs-on-restaurant-patios (Aug. 22, 2017).
[25] *See* H.B. 263 Status at https://www.legislature.ohio.gov/legislation/legislation-status?id=GA132-HB-263.
[26] *See* Ohio bill would legally allow dogs on restaurant patios, Laura Hancock, Cleveland.com, http://www.cleveland.com/open/index.ssf/2017/08/bill_in_ohio_legislature_would.html (Aug. 11, 2017).
[27] *See id.*
[28] *See* Seigel, supra.
[29] *See id.*

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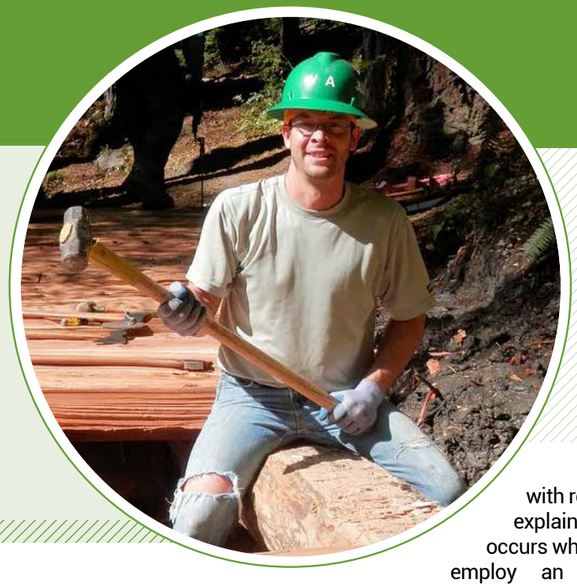
The More Things Change, the More They Stay the Same

Updates to the Independent Contractor Classification Under the FLSA



Employers who misclassify employees as independent contractors can be liable for back pay, tax and insurance obligations, reasonable accommodations under the Family and Medical Leave Act and Americans with Disabilities Act, employee benefits, liquidated damages, and civil penalties. Consequently, the stakes are high.

BY ALEXA E. CELLIER

The end of the Obama Administration was marked with progressive changes in wage and hour laws. In July 2015, the Department of Labor addressed the problem of misclassifying employees as independent contractors, which leaves the employees without certain minimum wage, overtime, unemployment and workers' compensation protections.

To determine whether an individual was properly classified as an independent contractor, Administrator Interpretation No. 2015-1 ("AI 2015") directs employers to apply the same economic realities test that is applied to the Fair Labor Standards Act's ("FLSA") "suffer or permit to work" standard.[1] By direct application of the FLSA's economic realities test,

AI 2015 focuses on the worker's economic dependence on the employer. This analysis considers six factors: (A) the extent to which the work performed is an integral part of the employer's business; (B) the worker's opportunity for profit or loss depending on his or her managerial skill; (C) the extent of the relative investments of the employer and the worker; (D) whether the work performed requires special skills and initiative; (E) the permanency of the relationship; and (F) the degree of control exercised or retained by the employer. No single factor is determinative.

For the first factor, AI 2015 used a broad interpretation of "integral," explaining that a call center employee is integral even if hundreds of other individuals perform his same function. Similarly, a carpenter is integral to a construction company that frames residential homes. For the second factor, AI 2015 indicated that the employers should not focus on the worker's ability to work more hours, but rather on whether the worker exercises managerial skills affecting his profit or loss. With respect to the third factor, AI 2015 highlighted the importance of the worker's investment as compared with the company's. Regarding the fourth factor, AI 2015 explained that technical skills are not the focus; rather, *business* skills, judgment and initiative inform whether the worker is operating his own business. For the fifth factor, AI 2015 specified that a permanent or indefinite relationship is indicative of independent contractor status if it results from the worker's own independent business initiative. Lastly, AI 2015 cautioned that the sixth factor is not satisfied merely by allowing an employee freedom to work off-site or from home, in part, because employers can still maintain stringent control over employees working off-site due to technological advances and enhanced monitoring mechanisms.

In January 2016, another Administrator's Interpretation was issued that continued the Department of Labor's progressive approach to characterizing employees' status, but this time with respect to joint employment issues.[2] It explained that "horizontal" joint employment occurs when two or more employers separately employ an employee and are sufficiently associated with each other with respect to the employee.[3] "Vertical" joint employment occurs when an employee for an intermediary employer is also economically dependent on another employer with regard to the same work.[4] For example, an employee of a subcontractor might also be an employee of the general contractor. The Migrant and Seasonal Agricultural Worker Protection Act provides several factors for assessing the existence of a vertical relationship, and some courts of appeals have applied those same factors to assessments under the FLSA. AI 2016 highlighted that joint employment has become increasingly common.

Although the DOL was cracking down on misclassification of employees as independent contractors, in June 2017, it withdrew the above two guidance letters.[5] The DOL cautioned, however, that the withdrawal "does not change employers' legal responsibilities."[6] Secondary sources advise that any changes brought about by the Trump Administration will take time to reach the enforcers at the ground level. Further, with respect to private lawsuits, courts will likely enforce the regulations based on precedent. As a result, employers should continue to follow the guidance in the two opinion letters.

On June 28, 2017, the DOL announced that it is reinstating the issuance of Wage and Hour opinion letters.[7] Until issuance of those opinion letters, another source indicates that the landscape continues to hold onto an expansive view of "employee" status.[8] In fact, the DOL website still displays Fact Sheet #13, which details the six factors for independent contractor classification outlined above.

Employers who misclassify employees as independent contractors can be liable for back pay, tax and insurance obligations, reasonable accommodations under the Family and Medical Leave Act and Americans with Disabilities Act, employee benefits, liquidated damages, and civil penalties. Consequently, the stakes are high. Answers to many questions regarding independent contractor classification are likely in 2018, but until then, employers should follow the DOL's caution that their responsibilities are unchanged.

[1] 29 U.S.C. § 203(g)
[2] Administrator's Interpretation No. 2016-1 ("AI 2016")
[3] 29 C.F.R. § 791.2
[4] 29 C.F.R. § 500.20(h)(5)
[5] *DOL Withdraws Independent Contractor Guidance Issued in 2015*, Practical Law (Jun. 7, 2017)
[6] Aaron Goldstein, *Is Trump's DOL Pulling Back on Independent Contractor Classification Enforcement? Does It Matter?* (Jun. 8, 2017), *available at* https://www.dorsey.com/newsresources/publications/client-alerts/2017/06/trumps-dol-pulling-back-on-independent-contractor
[7] DOL News Release, *available at* https://www.dol.gov/newsroom/releases/whd/whd20170627
[8] Laurie M. Weinstein, DOL: "Joint Employer" and "Independent Contractor" Guidance Out and Wage and Hour Opinion Letters In (Jun. 28, 2017)

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Points of Practice

Out of the Office:

Progressive Policies Improve Employees' Work/Life Balance

BY KEGLER BROWN HILL + RITTER ATTORNEYS

Too many professionals worry about taking time off, but even though there's work to be done, we need to take care of our own mental health. According to attorneys at Kegler Brown Hill + Ritter, sometimes it's possible to do both.

Jeff Nein, IP Attorney

While my fiancé was serving an extended residency rotation in Italy, I attended a conference in Spain. I created a plan to travel to Palermo, Sicily, after the conference, and spend a couple months working out of the office. It wasn't a vacation–more of a change of scenery.

To accomplish this, I started communicating and coordinating with firm directors early on, putting goals in place that helped me be effective abroad. Also, my firm's policy on technology allows for secure, remote access to everything I need, no matter where I am. Even overseas, I was able to communicate with clients, complete project tasks and meet my billable hours, and I was thrilled to be with my fiancé without taking significant time away from work.

Vinita Mehra, Co-Leader, Global Business Practice

I was born in Mumbai, where much of my family still lives, and India is critical to my practice. Virtual offices are helpful, but in order to maintain both business and personal connections, I must travel to India regularly.

Last year, I balanced client visits with family activities by having my husband and children join me for the final 10 days of a 20-day trip to India. To make this trip worthwhile, planning began a year and a half in advance. I was involved in the firm's budgeting process and paid for my family's travel myself. We made sure to maximize my useable time abroad before my family arrived and scheduled business meetings with local companies and organizations accordingly.

This trip helped me maintain and make new business relationships, and allowed my children to stay connected to their family. Afterwards, the firm was able to gauge the trip's value in a number of ways: new clients or new work from existing clients, as well as positive client responses and continued or improved communication.

Katja Garvey, Global Business Attorney

We have a longstanding relationship with German law firm Friedrich Graf von Westphalen (FGvW) and in 2015, I spent a three-month secondment at their Freiburg office. This opportunity came early in my career, and as a native German building a practice around the European market, it was an invaluable professional and personal experience. During my time at FGvW, I attended seminars and conferences in multiple countries, worked on international projects, attended local trials and, together with a colleague from our Columbus office, presented to FGvW attorneys and clients on U.S. legal issues relevant to German companies, all while continuing to work on Kegler Brown projects.

One of the personal perks of this secondment was that my husband was able to join me. He'd never lived outside of the U.S. before, so this trip allowed me to introduce him more to my culture and experience it together. We had the chance to take weekend trips to the Alsace area in France, explore the Black Forest around Freiburg, visit my family and friends, and get all the benefits of being "out of the office" while still gaining experience practicing German law, building relationships with German and European referral sources and further connecting Kegler Brown to FGvW. And in September 2017, attorneys from FGvW visited our office in Columbus and teamed with our attorneys for a presentation on doing business in Germany.

David Wilson, Co-Chair, Privacy + Data Security Practice

Recently, Kegler Brown revamped its parental leave policies. We include attorneys and staff, have multiple leave options for both male and female parents of biological or adopted children, and provide additional leave time for parents of multiples – which came in handy when we had an attorney give birth to twins this year.

In the last year, eight of our attorneys, including myself, welcomed new children. After my wife and I had our first son, Dean, I fully utilized the firm's parental leave policy. Rather than utilizing parental leave time as a block, I had the flexibility to spread the leave out, using it over time, which is one of our policy's greatest benefits.

It is refreshing to work at an organization where employees are encouraged to utilize parental leave and are not looked down upon. The arrival of a child is definitely a time to be out of the office, and spreading out my leave helped me be there for some of the heavy lifting after the rest of our friends and family went home. Plus, I had the opportunity to spend more time at home with my family than I would have if I had taken it all at once.

Lori Fuhrer, Litigation Attorney

Sometimes all that's stopping you from getting time away from the office is you. Sometimes you just need to go. I turned 50 last year, and it was a milestone I didn't want to leave unmarked. As attorneys, the life we've chosen often demands burning the candle at both ends. We're used to running both a marathon and a sprint. But, if we're going to keep that pace, we have to give ourselves permission to recharge when we can, to pay ourselves back. When I turned 50, I had a good excuse to do just that.

To recharge my mind and my body, I travelled to California, to a remote Buddhist monastery where I spent a week meditating, cooking, hiking and soaking in hot springs. I was looking for solitude, but when I got to the mountain and realized my week without cell coverage had started, I felt momentary panic. I knew my team would have everything covered at work, but it took a little while to stop looking at my phone.

I'm changed by the experience. I'm still a perfectionist, and I still work a lot of evenings and weekends. But, I have renewed appreciation for the craft we practice as lawyers, and for the meditative quality of doing work we love. I see more opportunities to listen and I judge myself less harshly. And, I live without the regret I might have felt if I'd not gone. Turning 50 was a milestone, deserving to be marked in this way, with something truly memorable.

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Insights from a Law Student:
My First Semester of 1L

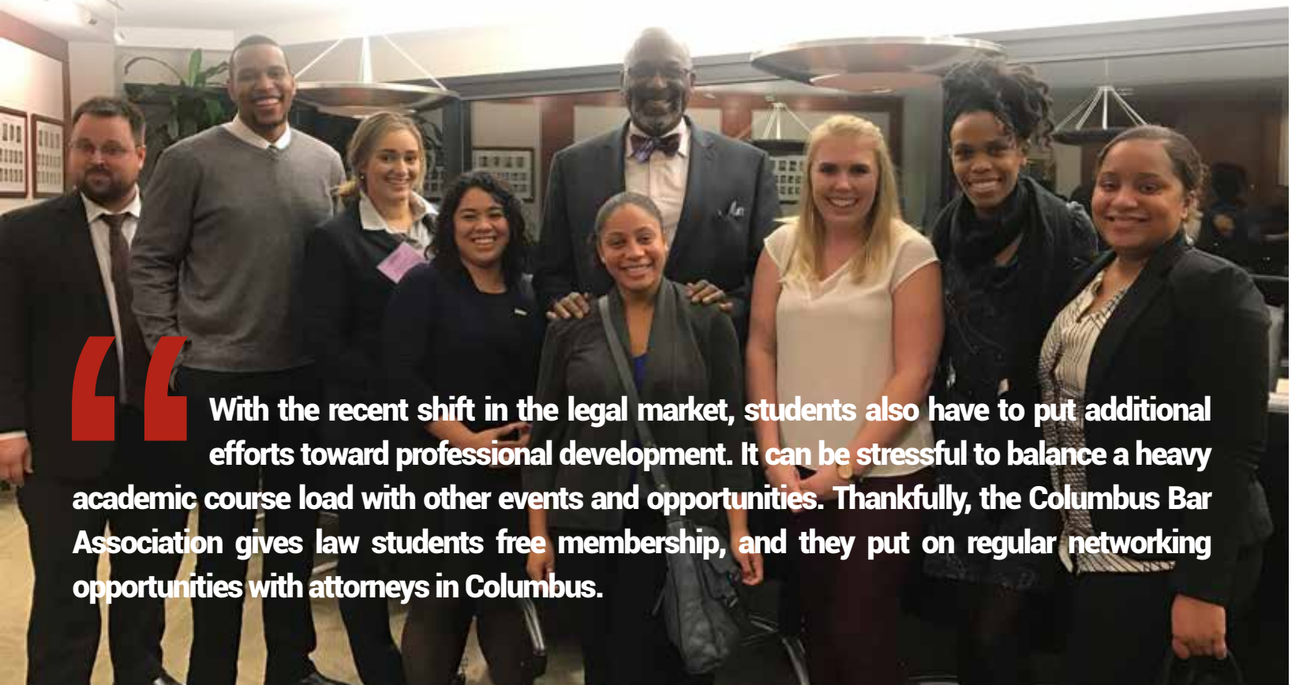
BY SARA K. SAMS

Before I started 1L, I frequently heard law school compared to a horse race. Family, friends and current students warned me to stay in my lane and keep blinders on toward what others were doing. So far, I have found their advice to be true as I handle the new challenges of law school.

The biggest of those being the complicated material, heavy workload, self-doubt and anxiety. Their advice has helped me stay focused on my own goals. And despite these challenges, I have never regretted my decision to go to law school, and being in school has only reaffirmed my decision to become a lawyer.

I was underprepared for the sheer complexity of information we are expected to learn in law school. Law school is truly like learning a different language. Even after learning the new vocabulary, it challenges your way of thinking and reasoning. Of course, above all, there is the dreaded cold call. While the material has become easier to read and understand, I do still worry that I will miss an important piece of the case and get asked about it in the next class. The fear of being cold called hasn't completely gone away, but it has taught me to think on my feet and expand my thoughts. I still walk into class with some nerves every day, but it has gotten easier over my first semester.

I've also been surprised by the heavy workload of law school. When I received my syllabi for classes, I reviewed the homework assignments first. They each seemed about twenty pages in length. I thought that seemed reasonable. Then I received my books and started reading. What seemed like a short reading assignment took hours! At orientation, we were told that we needed to do even more work after the reading, including briefing the cases and preparing the outline. During the first few weeks, I wondered how I would even survive the semester. While the amount of work hasn't decreased, I already feel more confident in finding the important information in a case and distilling that information for my outline.



"With the recent shift in the legal market, students also have to put additional efforts toward professional development. It can be stressful to balance a heavy academic course load with other events and opportunities. Thankfully, the Columbus Bar Association gives law students free membership, and they put on regular networking opportunities with attorneys in Columbus.

Self-destructive thoughts and anxieties are constantly on my mind in law school. I know many other students have the same thoughts and anxieties, as well. All of my classmates did reasonably well in college, but we know it is not feasible for everyone to be at the top of the class in law school. I consistently deal with worries that I am not studying enough or participating in enough events outside of the law school to ensure I have network connections. A lot of law students adhere to the mantra "don't let them see you sweat," which only adds fuel to the thought that your neighbor is smarter and doing more work than you are. However, Ohio State has tried to combat these fears by offering a midterm in one of our first semester classes. This was a great way for me to evaluate my study skills in the middle of the semester and make sure I was comfortable with my study plan. It was also helpful to make sure that I'm studying in a productive way. Many students struggle with the lack of graded homework and assignments, and the shift to one final exam as the entire class grade. The midterm was a terrific way to diffuse fears and add in a self-check.

With the recent shift in the legal market, students also have to put additional efforts toward professional development. It can be stressful to balance a heavy academic course load with other events and opportunities. Thankfully, the Columbus Bar Association gives law students free membership, and they put on regular networking opportunities with attorneys in Columbus. Career Services at the Moritz College of Law has also been a great resource for networking opportunities, and their advisors work hard to demystify the job search. Every law student has a career advisor, who individually meets with students to help them achieve their career goals. I've already met with mine multiple times, and I already feel like I have a plan ready for the job search.

While the advice I received is good for studying, taking the blinders off allows me to better engage with fellow students. Many of my classmates have taken time off between college and law school. Several pursued other careers or passions. While there is always work to be done in this respect, I have found my class to be diverse in many ways that have enriched my classroom experience. Even though I keep the blinders on when it comes to how much to study and what to study, taking the blinders off helps me better understand the new material and different perspectives of the law.

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To be honest, I'm not completely sure of the legal career path I'd like to take. I have a variety of interests, including workplace discrimination and harassment, government affairs, and legislation. I have really enjoyed my classes this semester: Torts, Civil Procedure and Criminal Law. But I'm also looking forward to next semester's, including Real Property and Contracts. I hope to bolster my experience this summer with a legal internship, or possibly participate in the summer abroad program at Oxford University. My ideal job would allow me to enjoy the law I'm practicing, coinciding with an affable and welcoming environment.

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Points of Practice

How to Ethically Tell Your Story (and Theirs)

BY KWAME CHRISTIAN

Storytelling is one of the most powerful communication tools in human history. We used word of mouth to communicate long before the written word. Before Common Era, these stories were critical for survival because communities needed an efficient way to teach values, knowledge and societal norms to the next generation.

Although storytelling is one of the most primitive forms of communication, it is also one of the most effective because our brains are hardwired for stories. Our brains process stories as if they happened to us personally. It gives listeners a vivid, simulated learning experience that is much more difficult to forget than simple statistics or bland data.

Lawyers and Stories

As attorneys, storytelling plays a vital role in our personal brand and ability to educate and persuade.

Branding

Today's legal market is extremely saturated and it's becoming increasingly difficult to stand out to our potential clients. With today's technology, we are easily distracted; with that comes a much shorter attention span. Often times, the client doesn't have enough time to dig deeply into the credentials of their attorneys; therefore, they make decisions based on the branding and goodwill of the attorney and the firm.

There are several ways to improve your personal brand but, the best way is to provide value through the creation of high-level, practical content.

For example, I host the top-ranked negotiation podcast in the nation, *Negotiate Anything*. It teaches the fundamentals of persuasion and conflict resolution to professionals in 140 different countries. My goal is to consistently provide content that is practical and actionable to my audience.

As a result, I've been able to create a trusting relationship with the audience, so they view me as a thought leader in the field. This has lead to a variety of unique business opportunities. For example, I've had the opportunity to do the following:

1. Consult with companies and attorneys as they worked to close large deals.
2. Lead professional development trainings and CLEs around the country.
3. Coach attorneys as they seek to become rainmakers by establishing themselves as thought leaders within their respective practice areas.

Your professional narrative must be typified by the following three elements:

1. Truthful
2. Authentic
3. Aligned with your passion, strengths and interests

The key to creating a powerful professional narrative is to consistently create valuable content that is guided by these characteristics. As you create this content, your goal should be to educate, not self promote.

Education

Whether it is in the office with our clients, the negotiation table with opposing counsel or the classroom with our students, our job as attorneys is not only to persuade but also to educate. The ability to tell a timely and germane story is one of our best weapons in the pursuit of this common understanding.

However, we are governed by a strict ethical code of conduct; one of the most important portions being confidentiality. Confidentiality is the bedrock of the attorney-client relationship. It is what leads to the free flow of information and the creation of a trusting, strong working relationship.

With that said, how do we harness the power of story in a way that effectively and vividly conveys the core message while still honoring our commitment to our client's confidentiality and our respect for the code of professional conduct?

The portions of the code that deal specifically with confidentiality are 1.6 (confidentiality of information) and 1.9 (duties to former clients). Interestingly, the code doesn't specifically cover the pedagogical concerns associated with confidentiality that are addressed in this article.

I called the Ethics Hotline of the Ohio Board of Professional Conduct and the attorney on call provided me with some helpful rules of thumb that we can use to guide us as we create and present content to our audiences. Here are the three main takeaways:

- **Details:** Change key details like names, places and context in ways that provides anonymity.
- **Extra Care Necessary for Trials:** Be especially careful with cases where you've represented a party at trial because it would be easier to trace the details to the specific case.
- **Confidentiality Still Necessary for Public Cases:** Details of the case may become public over the course of the representation. We still have a duty of confidentiality to our clients in these cases because not all of the information is public.

> **"As attorneys, storytelling plays a vital role in our personal brand and ability to educate and persuade.**

Ethical storytelling is one of the most powerful tools we have in personal branding and education. If you can find ways to inject stories into your marketing and everyday communication, you'll increase understanding and provide value to your clients, colleagues and community.

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IN MEMORIAM

TIMOTHY J. OCHSENHIRT
1946-2017

Roetzel & Andress mourns the loss of its dear friend and colleague, Tim Ochsenhirt.

Our Chairman and Chief Executive Officer for 27 years, Tim was a mentor, guiding light, and fierce champion of our firm and its people.

He was brilliant, gregarious, tough as nails, and without doubt, a visionary leader.

We extend our deepest condolences to Tim's children, grandchildren, and many beloved family and friends.

That man is a success who has lived well, laughed often and loved much.
Ralph Waldo Emerson

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Points of Practice

BOOK REVIEW: *Business and Commercial Litigation*

BY ANGELA BALDREE

The fourth edition of *Business and Commercial Litigation in Federal Courts (BCLFC)*, edited by Robert L. Haig, is now available through Thomson Reuters Westlaw. Almost 300 authors, including 27 judges, contributed to this edition.

The previous three editions, published in 1998, 2005 and 2011, have been well received in the legal community. However, substantial changes to law and procedures in the area of business and commercial law over the last five years have prompted this new edition.

The new edition contains significantly more information than the previous edition. What began as a six-volume set in 1998 has more than doubled to 14 volumes with an additional 25 chapters. Examples of new chapters include "Civil Justice Reform," "Cross-Border Litigation," "Social Media" and "Fashion and Retail."

The chapter entitled "Civil Justice Reform" gives users a look at proposed changes in civil justice, as well as the history of changes. The chapter points out that virtually all parties involved in civil litigation agree that changes need to be made because cases take too long and are extremely costly.

The chapter "Cross-Border Litigation" helps attorneys who are trying international cases or cases with multiple jurisdictions. Attorneys will receive tips on determining relevant law, selecting a venue and learning about claims and defenses available.

> **Overall, *Business and Commercial Litigation in Federal Courts* is a resource that commercial litigators should consider for their private libraries. According to the authors, no other publication on commercial litigation in federal courts is available, making this a valuable resource.**

Since social media has become the preferred means of communication, the new chapter entitled "Social Media" is useful for its insights on using social media information as evidence. The chapter also explains how social media posts are being used in jury selection around the country. Similarly, a chapter entitled "Media and Publishing" focuses on strategies, defenses and damage requests for attorneys involved in litigating media and publishing claims.

The "Fashion and Retail" chapter investigates patents and intellectual property laws associated with the fashion industry. Bankruptcy and other relevant issues are also addressed.

Though the new edition of *BCLFC* contains more than double the information of the previous edition, a summary of contents in the first volume and detailed tables of contents at the beginning of each volume enable readers to access the sections they need quickly. Most chapters are divided into multiple sub-chapters with even more sections, but an informative introduction to each chapter contains scope notes which clearly lay out what researches will find in that particular chapter. For example, "Aviation" begins with a two-page introduction on aviation law that gives the overall scope of the chapter: The chapter will introduce litigators to the complexities of aviation laws and regulations, assure attorneys that they can admit they are unable to give crash survivors and/or family members adequate counsel, and explain the investigative process of the NTSB and the litigation processes for crashes of either domestic or international flights.

Following the scope, the chapters delve into various areas of litigation. For example, in the "Aviation" chapter, these include strategies for plaintiff's lawyers, issues to raise with clients, causes of action, determination of proper parties, selection of expert witnesses and various defenses of the airline, airport, air traffic control or manufacturer. Chapters then end with practice aids which can include checklists, forms and other practice guides. "Aviation" ends with practice aids that include sample forms for production of documents from the airline, sample interrogatories for the manufacturer and airline, sample complaints and sample jury instructions.

Throughout *BCLFC*, the authors point out the relationships between rules of procedure and substantive law when possible and outline tactics for representing both plaintiffs and defendants. In addition to being a beneficial resource, it is an "idea" book full of insight and perspective that only its authors can share. In addition, a CD-ROM is included that contains jury instructions, forms and checklists.

Following the fourteen volumes is a paperback Volume Fifteen, which serves as the table of cases and index. The publishers plan on updating this volume annually so users have access to the latest information.

Overall, *Business and Commercial Litigation in Federal Courts* is a resource that commercial litigators should consider for their private libraries. According to the authors, no other publication on commercial litigation in federal courts is available, making this a valuable resource. The 153 chapters are laid out in an orderly fashion so researchers can easily find the exact area of law they are interested in. Each chapter is full of valuable information, arranged logically with easy-to-understand language.

This latest edition of *BCLFC* is available at the Franklin County Law Library, thanks to the generous donation of the Columbus Bar Association.

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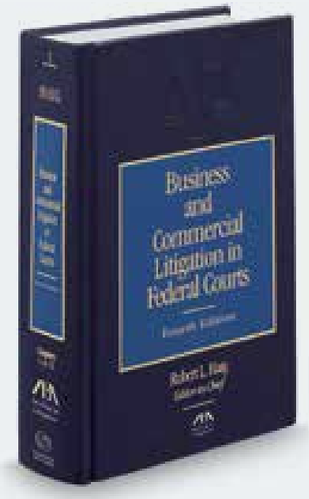

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Our Moment in History:
Protesting *and* Censorship

BY ELIZABETH BONHAM

Prior to World War II, the U.S. Supreme Court provided few protections for protestors. It was the norm in our nation's history to criminalize anti-war activists, socialists and other political dissenters for what should have been constitutionally-protected speech.[1] This is the nation where the American Civil Liberties Union was founded (in 1920): political dissenters were routinely persecuted, and law on the rights of speech and assembly did not catch up for decades.

During the Civil Rights Movement of the 1960s, Black activists and their allies marched to demand that the federal government actualize the freedoms that the Civil Rights Amendments promised. White anxiety about losing racial dominance foamed and exploded, in churches and at hardware stores. In the summer of 1964, Clarence Brandenburg walked into the Cincinnati streets with hooded Klansmen, burning crosses and carrying weapons, and pledged that his group would take "revengence" against the federal government's "suppression" of the "Caucasian race." His message was one of genocide premised on racial superiority. After his arrest, under Ohio's criminal syndicalism statute, the Court held that the State may not criminalize speech – even speech that advocates violence including racial terror – unless it intends to and is likely to imminently incite such violence.[2] This is a high standard. It means the State may almost never censor speech based on its content. As the ACLU commonly proclaims, First Amendment doctrine now protects speech whether we like it or not.

During the same period in our history, the Court developed a parallel speech-deferential jurisprudence for the right to assemble, largely in the context of civil rights activism. In 1963, the Court held the State could not disperse a peaceful group of Black student civil rights demonstrators marching to their state's capital;[3] in 1965, the Court found that a breach-of-the-peace statute was unconstitutional after civil rights demonstrators were arrested for singing hymns outside of a segregated restaurant;[4] and in 1966, a plurality of the Court found that the First Amendment protected Black activists conducting a peaceful sit-in at a public library in protest of its lending practices.[5]

As a legacy of these protests, the United States ended up with a robust First Amendment doctrine and a political culture that venerates free speech and expression. But the world has changed.

Our protests look different than the protests of the 1960s. Since 2001, the federal government's narrative of protectionism from global terror has caused executive branch authority to balloon. Local police have acquired sophisticated surveillance technology, from license plate scanners to cell-tower replicators that can pinpoint an individual's location based on their cell phone's signal. Military equipment has also been absorbed into the daily operations of local police, who lack the training to use it. This includes technology like the Long Range Acoustic Device (LRAD), a dispersal tool that projects loud, high-frequency soundwaves capable of causing permanent physical injury. The Columbus Police Department has one of these in its arsenal.

> **"As the ACLU commonly proclaims, First Amendment doctrine now protects speech whether we like it or not.**

One way this increased security has manifested in tension with the First Amendment is that the Court has recently allowed the government to suppress peaceful group expression in the interest of counter-terrorism.[6] In a way, this is not a huge departure from what we already know: the Court has allowed the State to violate our most fundamental rights in times of real or perceived national security crisis.[7] But as civil libertarians, we react with deep mistrust when the State is permitted to flex increased control over our freedoms. And we are having to resist a disquieting trend as courts increasingly accept the State's security interest as a justification for shutting down protest speech.[8]

These political and doctrinal developments map onto a changing racial environment. The 2008 manifestation of the decline of White dominance, the election of Barack Obama to the Presidency, pushed Tea Party and Nazi marchers back into the streets. The Bush administration militarization of police escalated precipitously through the Obama presidency. In response, racial justice groups have organized to protest police murders in Cleveland, Ferguson and Baltimore. Black activists and their allies are routinely threatened, arrested and injured.

The 2017 election of Donald Trump helped the new, unhooded incarnation of white supremacy in America to coalesce in the alt-right movement. As the alt-right marches, anti-oppression counterdemonstrators continue to rise up in new numbers. While the White House has openly allied itself with the alt-right, the now-bloated security state has promised to surveil justice groups. And local police department after local police department, the entities charged with protecting First Amendment rights on the ground, has been found to exact race-based violence upon Black and Brown people, without official rebuke.

Civil libertarianism rests on the principle that when the people cede power to the State, the State will never give it back — and will wield it to oppress whichever group is undesirable to it. This principle is neutral; it says that the suppression of any group will lead to the suppression of all groups. We have resisted censorship in our nation's history, of communists, Jehovah's Witnesses, anti-war activists and abolitionists. We have resisted censorship of Nazis. We are now confronted with much more sophisticated tools of censorship. And with the continuing reality that our State is not as neutral as our principle: it is and has always been tipped against the liberation of Black and Brown people and therefore against justice.

Can the civil liberties premise, when applied to a society whose very existence rests upon the subjugation of some people, be applied in a way that ultimately promotes justice for all people? Can demanding the State to allow a group of White people to march into a city with weapons and torches and espouse an agenda of racial killing, protect us all from censorship the way we believe it will? Does the civil libertarian concern that ceding to the State the power to censor messages that it deems dangerous continue to be appropriate at our moment in history?

It is crucial that civil libertarians ask ourselves these questions honestly and publically. The ACLU will continue to evaluate how we can accomplish our mission: to defend the people from censorship by the State so that we the people may realize justice among ourselves.

[1] *Schenck v. U.S.*, 249 U.S. 47 (1919); *Whitney v. California*, 274 U.S. 357 (1927).
[2] *Brandenburg v Ohio*, 395 U.S. 444 (1969).
[3] *Edwards v South Carolina*, 372 U.S. 229 (1963).
[4] *Cox v. State of La.*, 379 U.S. 536 (1965).
[5] *Brown v. State of La.*, 383 U.S. 131 (1966).
[6] *Holder v Humanitarian Law Project*, 561 U.S. 1 (2010).
[7] *Toyosaburo Korematsu v. U.S.*, 323 U.S. 214 (1944).
[8] E.g., *Bl(a)ck Tea Society v. City of Boston*, 378 F.3d 8 (1st Cir. 2004).

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Hammers, Switchblades and Law Hawks:

Lawyer Advertising under the First Amendment

BY JASON H. BEEHLER

My high school social studies teacher, Mr. Morton, had this famous quote from Voltaire hand-painted on the front wall of his classroom:

> I wholly disagree with what you say — and I will defend to the death your right to say it.[1]

That sentiment encapsulates the U.S. Supreme Court's First Amendment cases about attorney advertising. Much of lawyer advertising is terrible, but we tolerate it in the name of free speech.

This was not always so.

For much of America's history, lawyer advertising was forbidden. America inherited not only England's legal system, but also its attitude toward advertising legal services. Eighteenth-century English barristers found advertising vulgar and tasteless: "Advertising, it was believed, would be beneath their dignity. Since barristers were few and clients plentiful, there was no need for Madison Avenue."[2]

That attitude persisted in America through the nineteenth century, although there were exceptions (like in 1859 when Abraham Lincoln advertised his law practice in the newspaper[3]). In 1908, the ABA adopted its first Canons of Ethics.[4] Under the Canons, business cards and "law lists" were acceptable, but it was unprofessional to solicit business through, "circulars, advertisements, or by personal communications or interviews not warranted by personal relations." It was downright wicked to procure business, "by indirection through touters of any kind." And the ABA proclaimed "self-laudation" to be "intolerable," because such activity was said to "defy the traditions and lower the tone of our high calling."

Lawyer advertising in the U.S. is now a billion-dollar industry[5] that has spawned the likes of Jim "the Hammer" Shapiro ("You call, I hammer!"), Marco Palumbo ("The California Switchblade"), and Bryan Wilson, the now infamous Texas Law Hawk.

How did we get here?

A little more than 60 years after the ABA Canons, two Arizona lawyers—John Bates and Van O'Steen—opened a law office in Phoenix to serve people who had little money but did not qualify for legal aid.[6] At the time, lawyer advertising was banned in all 50 states.[7] In February 1976, Bates and O'Steen placed an ad in the Phoenix daily newspaper, advertising "legal services at very reasonable fees." The Arizona State Bar filed a complaint against Bates and O'Steen, who conceded that their actions violated Arizona's disciplinary rules, but claimed that Arizona's ban on attorney advertising violated their First Amendment rights. They took their case to the U.S. Supreme Court and won.

Justice Blackmun, writing for the majority, not only invalidated the Arizona disciplinary rule, but took the opportunity to wax poetic on American commerce: "Commercial speech serves to inform the public of the availability, nature, and prices of products and services, and thus performs an indispensable role in the allocation of resources in a free enterprise system."[8] Although it is doubtful that anyone watching Jim "The Hammer" Shapiro shout "I sue drunks!" ever shed a grateful tear at how Shapiro's advertisement promotes efficient resource allocation, Blackmun continued undeterred: "The disciplinary rule serves to inhibit the free flow of commercial information and to keep the public in ignorance."[9]

> **"Much of lawyer advertising is terrible, but we tolerate it in the name of free speech. This was not always so..."**

The Arizona Bar offered a multitude of justifications for its rule: unrestricted advertising would be inherently misleading, stir up needless litigation, increase the costs of the profession and scare away new lawyers, decrease the quality of legal work and "tarnish the dignified public image of the profession" (that one seems particularly prophetic). The court shot them all down.

It is easy enough to criticize the Supreme Court for opening the floodgates and releasing a tide of unseemly and sometimes repulsive lawyer ads. But from an access-to-justice standpoint, the court took a principled stand in declaring that lawyers should be allowed to advertise just like everyone else, provided that the ads are not false or misleading. And *Bates* reminds us why the court was right. Bates and O'Steen were no switchblades. They honestly believed (as did the lawyer who argued the case for them) that people with moderate incomes ought to be able to find an affordable attorney.[10] This is the ad they placed in the Phoenix newspaper:

LEGAL SERVICES

AT VERY REASONABLE FEES

- **Divorce or legal separation--uncontested (both spouses sign papers)**

  $175.00 plus $20.00 court filing fee

- **Preparation of all court papers and instructions on how to do your own simple uncontested divorce**

  $100.00

- **Adoption--uncontested severance proceeding**

  $225.00 plus approximately $10.00 publication cost

The ad is not garish; it doesn't burst with obnoxious graphics or promises of foes reduced to ashes. It simply tells readers about the lawyers' services and the related fees. Protecting the ability of lawyers to communicate that kind of information is consistent not only with the First Amendment, but also with the Lawyer's Responsibilities set forth in the preamble to the Ohio Rules of Professional Conduct:

> A lawyer should seek improvement of the law, ensure access to the legal system, advance the administration of justice, and exemplify the quality of service rendered by the legal profession.[11]

Bates and O'Steen fought for the principle that the public ought to be able to get useful information about lawyers and their services. That is a principle worth remembering, even if the price of the principle is that a YouTube search for "bad lawyer ad" returns "about 461,000 results."

At least we have something to entertain us when we get tired of cat breading and the dramatic gopher.

[1] Mr. Morton, like many others, was cruelly deceived. The quote is not Voltaire's. It was apparently a creation of English historian Evelyn Beatrice Hall, at least according to the dogged internet sleuths at Quote Investigator. https://quoteinvestigator.com/2015/06/01/defend-say/

[2] Francis & Johnson, *The Emperor's Old Clothes: Piercing the Bar's Ethical Veil*, 13 Willamette L. Rev. 221, 223-24 (1977).

[3] You can see the ad at http://www.rarenewspapers.com/view/554892.

[4] ABA Canon of Ethics 27 (1908), available at: https://www.americanbar.org/content/dam/aba/administrative/professional_responsibility/1908_code.authcheckdam.pdf

[5] http://www.abajournal.com/magazine/article/legal_advertising_viral_video (Kantar Media's Campaign Media Analysis group projects that in 2017 lawyers and law firms will spend $924 million on television ads alone).

[6] *Bates v. State Bar of Ariz.*, 433 U.S. 350, 354 (1977).

[7] https://www.mprnews.org/story/2007/07/05/lawyer_advertising

[8] *Bates*, 433 U.S. at 364.

[9] *Id.* at 365.

[10] https://www.mprnews.org/story/2007/07/05/lawyer_advertising.

[11] Ohio R. Prof. Conduct, Preamble, Section 6.

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Free Speech or Discrimination:

When Cake Shops Stop Serving

BY CARLY EDELSTEIN

You're engaged to the love of your life. You begin planning your wedding by selecting the venue, the DJ, the florist, the caterer. Your next step is to order a custom cake for your special day. You head into a local bakery known for their beautiful cake displays, but you get turned away once the baker learns that you intend to marry a person of the same sex and eat a custom cake from their bakery.

This is what happened when David Mullins and Charlie Craig walked into Masterpiece Cakeshop in Denver in 2012. And this is the scenario that the United States Supreme Court considered on December 5, 2017, when they heard arguments in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission*.

How did we get to this intersection between religious liberties and freedom of speech on the one hand and the civil rights of the LGBT community on the other?

A Bit of Background

Until recently, wedding flowers, cakes and venues were far from the minds of members of the LGBT community, because same-sex marriage had been outlawed in all 50 states. In 2003, the United States Supreme Court officially struck down same-sex sodomy laws, and in 2004, Massachusetts became the first state to legalize same-sex marriage. In that same year and over the course of the following decade, numerous states adopted constitutional amendments limiting marriage to a union between one man and one woman, other states embraced same-sex marriage. The issue slowly wound itself through the state and federal courts, until it arrived at the United States Supreme Court in 2015. With its majority decision in *Obergefell v. Hodges*, the Supreme Court extended the fundamental right of marriage to the LGBT community, proclaiming that "same-sex couples may exercise the fundamental right to marry in all States."[1] Therefore, June 26, 2015 was a day of celebration.

This victory, however, came with a warning. In his *Obergefell* dissent, Justice Clarence Thomas predicted what would soon follow: "In our society, marriage is not simply a governmental institution; it is a religious institution as well. Today's decision might change the former, but it cannot change the latter. It appears all but inevitable that the two will come into conflict, particularly as individuals and churches are confronted with demands to participate in and enforce civil marriage between same sex couples."[2]

And, as predicted, we now find ourselves here, with *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* before the Supreme Court.

> **"How did we get to this intersection between religious liberties and freedom of speech on the one hand and the civil rights of the LGBT community on the other?**

The Facts

Colorado and many other states and municipalities have long had laws prohibiting discrimination in public accommodations, housing and employment. Under these laws, with respect to public accommodations, if you hold yourself out to the public as a business, and you seek participation in the commercial marketplace, you are required to serve all people equally, regardless of a number of identified characteristics such as race, sex and disability. In 2008, the Colorado legislature added sexual orientation to the state's anti-discrimination law.[3]

In 2012, David Mullins and Charlie Craig planned to get legally married in Massachusetts and return to Colorado to celebrate with family and friends. As part of their planning, Mullins and Craig visited local bakery Masterpiece Cakeshop to order a custom cake for their wedding festivities. When the store owner, Jack Phillips, discovered that the cake was intended for a same-sex couple's marriage celebration, he denied them custom wedding cake services and instead suggested they get a pre-prepared cake from the shop's refrigerated section or go elsewhere. Phillips did not ask for, and Mullins and Craig did not offer, any details about the design of their desired cake.

Mullins and Craig filed a complaint under Colorado's anti-discrimination law with the Colorado Civil Rights Division, which ruled in their favor, after concluding that the Cakeshop's refusal to provide custom cake services to the couple constituted illegal discrimination on the basis of sexual orientation. The case then worked its way through administrative proceedings in Colorado and then through the Colorado state courts. In August 2015, the Colorado Court of Appeals agreed with all of the determinations below, concluding that the Cakeshop's denial of services to Mullins and Craig constituted impermissible discrimination and the Cakeshop's asserted First Amendment arguments were without merit. The Colorado Supreme Court denied review, and on June 26, 2017, exactly two years after the Supreme Court's landmark *Obergefell* decision, the Court granted cert in this case.

The Arguments

It's a common misperception that the arguments in this case are about religion. The cake baker's best arguments are actually about speech and expression. He argues that his free speech rights trump the rights of gay and lesbian couples seeking to participate equally in the marketplace, and that he must receive an exemption from Colorado's anti-discrimination law. He also asserts that the Colorado law infringes on his religious liberties.

The Court must decide whether each of Phillips' custom cakes constitutes his own personal expression entitled to First Amendment protections or whether the Colorado law simply regulates business, "fostering full inclusion in civic life by guaranteeing equal access to businesses open to the public."[4] The Court must also consider whether the Colorado law is neutral and applies generally to the public without regard to religious beliefs.

What's at Stake?

This case is about more than cakes, as evidenced by the nearly 100 amicus briefs filed with the Supreme Court. If the Court rules in favor of the cake shop, it would seem that any business engaged in an "expressive" trade has a constitutional right to discriminate on the basis of sexual orientation, and perhaps even other traits. One group of amici put it particularly well: "If merely serving an individual implies an expression of views about the individual's core traits like race, religion or sexual orientation, any vendor could refuse to serve any member of the public on that basis and cloak such discrimination as freedom of expression."[5]

The case was argued on December 5, 2017, and an opinion is expected by June 2018.

[1] 135 S. Ct. 2584, *28 (2015)
[2] 135 S. Ct. at * 15 (Thomas, J., dissenting)
[3] Twenty-two states (including Colorado) have adopted some form of statewide prohibition against sexual orientation discrimination. Ohio has not incorporated sexual orientation into any statewide nondiscrimination law. *Ohio Municipal Equality Map*, Equality Ohio (Nov. 10, 2017, 6:33 PM), http://www.equalityohio.org/city-map/. Columbus and other cities in Ohio have extended these protections to sexual orientation. See Columbus Civil Rights Code Chapter 23.31. Although these protections exist, it is unclear what kind of teeth they have in practice.
[4] Brief of Respondents, Charlie Craig and David Mullins, Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, No. 16-111 (Oct. 23, 2017)
[5] Brief for First Amendment Scholars as Amici Curiae Supporting Respondents at 5-6, Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission, No. 16-111 (Oct. 30, 2017)

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From a Media Perspective: Fake News

BY COLLEEN MARSHALL

"If it's news it isn't fake. If it's fake, it isn't news." That's Pulitzer Prize winning journalist Connie Schultz's two-line answer to the two-year assault on the media and the First Amendment by the President of the United States.

Schultz, like many of us "old-school" journalists, came of age as Woodward and Bernstein were blazing Watergate's investigative trail and Walter Cronkite was commanding the attention of the nation. Reporters were respected, feared even, because they were going to shine the light of truth on corruption and misdeeds. Most of us still believe in the code of ethics and mission of the Society of Professional Journalists: seek truth and report it; be vigilant and courageous about holding those with power accountable. Lofty ideals that, in 2017, are increasingly difficult to assert.

A different kind of courage is needed in Donald Trump's Washington. On the day of the Presidential Inauguration, what should be a celebration of the peaceful transfer of power in the world's greatest Democracy, I feared for my safety on the streets of the nation's capital. I was heckled and jeered, taunted and mocked, merely because I was trying to do my job in the company of a television photographer carrying a camera with an NBC Peacock logo. Even as they celebrated his victory, Trump supporters refused to abandon the anti-media firestorm that followed candidate Trump along the campaign trail, where angry crowds were encouraged to turn and shout their frustrations at reporters who stood in the back of the room.

Now, a year after his White House win, the President continues to huff and tweet his way through a war against freedom of the press, seemingly unaware of the limits of federal powers. He proposed having the Federal Communications Commission review and revoke the licenses of network and cable broadcasters whose news programs he deems fake and unfair. The problem with the outrageous plan: the FCC does not license networks or cable channels. Networks do not have licenses to revoke. The FCC licenses individual, local stations.

Since taking office, President Trump touted the importance of hearing from "both sides" at a violent Neo-Nazi rally, and then denied saying it; he publicly called journalists "sick people" during a rally in Phoenix; and accused the media of being the "source of division in our country."

Perhaps we should have seen the 'us versus them' mindset coming when mainstream networks responded to the startlingly conservative, populist conversation on FOX News by creating the liberal leaning and equally biased nighttime programming on MSNBC and CNN. Inarguably, some of these programs have an agenda and adopt positions that are neither unbiased nor balanced. When a network uses typical news sets and graphics to package partisan information it becomes difficult to distinguish actual "real" news served up by respected journalists, such as Lester Holt. It's a challenge to convince viewers that reports are accurate, fair, balanced and thorough when audiences are accustomed to seeking and finding "news" that reflects their own beliefs and opinions, and discounting those that do not.

Even defenders of the First Amendment can be fickle. Attorney General Jeff Sessions, for example, criticized Georgetown University for refusing to provide a platform for alt-right speakers: "Protesters are now routinely shutting down speeches and debate across the country in an effort to silence voices that insufficiently conform to their views." A principled position for the nation's AG, who was nonetheless strangely silent when others in the administration demanded that NFL players be fired for kneeling silently during the National Anthem in protest of racism.

In *New York Times Co. v. United States*, 403 U.S. 713 (1971), the landmark First Amendment case, the Supreme Court made it possible for the New York Times and the Washington Post to publish the classified Pentagon Papers without government censorship or the risk of punishment. The government could not justify prior restraint. Even the White House cannot silence critics or obstruct publication of necessary truth.

The First Amendment will survive. The Constitution protects your right to call the President "unqualified" and to call reporters "hacks and flakes." You are free to speak, free to assemble, free to be politically active and the press is free to press forward because freedom is the bedrock of democracy. But you are also free to listen to views you don't share. The SPJ code supports the open and civil exchange of views – even views that you find repugnant. And there is nothing fake about that.

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"When a network uses typical news sets and graphics to package partisan information it becomes difficult to distinguish actual "real" news served up by respected journalists.

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From a Citizen's Perspective: Fake News

A casual look at First Amendment litigation during the last 10 years and what seems to be an increased use of false news to the point where it is harder to distinguish reality from fiction might be related.

BY JANYCE C. KATZ

In a recent Stephan Pastis cartoon, the notoriously without-ethics rat has tweeted false facts. The antelope, usually the brightest, always ethical character, reminds the rat how just a little quick research would have led him to the real facts. Rat responds that he knows, but lying is quicker and "[t]ruth is so 2015."[i]

The issue of fake news vs. real news, perhaps sloppily written so that a glaring omission or mistake makes it feel fake, seems omnipresent these days. Perhaps, because our current President seems to constantly bring up false stories; perhaps because of the news about creative Facebook posts created with support from a foreign country that we might have believed; or perhaps we have seen an untrue fact or two in a basically solid story, we are less likely to believe anything these days. Perhaps that is the goal of all of the fake news spewed at us.

As examples of his obsession with fake news, in late November, President Donald Trump offered a trophy for the most dishonest news outlet. Around the same time, he called a tape that he had apologized for during his campaign, "fake news." Trump also calls his opponents names repeatedly in an attempt to stigmatize them, but reacts angrily to anything he perceives as a slur against his name or his businesses.

Fake news has been a problem for centuries. The story of King David in the Second Book of Samuel depicts a glaring example of false news/information and the harm it can cause. A former servant of King Saul gave false information to Saul's crippled grandson, and King David, not knowing whom to believe, split the wealth and property of Saul between the servant and the truthful grandson.

Fake news aggrandizes and changes history. Peter Manseau, in *A Tale of Phantoms, Fraud, Photography and the Man Who Captured Lincoln's Ghost*[ii], tells the history of photography and the deceptions that arose when the photos were altered and when there were lies about the photographs' contents.

Then there are the dictators, who use fake facts and fake news to support and strengthen their positions. Charmers like Lenin, (*Lenin, The Man, the Dictator, and the Master of Terror*, by Victor Sebestyen[iii]) and Stalin, (*Stalin, Waiting for Hitler* by Stephen Kotkin[iv]) twisted reality using photographs and more to encourage belief in their form of Communism and in them as Great Leaders of the Great USSR; to better dispose of possible rivals and to hide unpleasant truths like mass starvation to destroy opponents.

Here in the US, we have had fake news and fake facts, sometimes used as political tools and other times used just to stir up a business for a newspaper. Brad Schwartz's well-written book, *Broadcast Hysteria: Orson Welles's War of the Worlds and the Art of Fake News*[v], depicts the panic of those who caught part of Orson Welles' radio play October 30, 1938, simulating a Martian invasion of New Jersey and New York, and tried to leave or debated suicide to avoid death by Martians. While the number of people who actually panicked was small, it was exaggerated by a press interested in creating readership and select Congressmen wanting to use the alleged panic for their own political gains.

Were some of the stories about misdeeds that weren't real published in today's world, perhaps Orson Wells would have filed strategic lawsuits against public participation (SNAPP). A SNAPP may have validity or it may just be an attempt to wear down an opponent. In 28 states other than Ohio, state laws provide for an anti-SNAPP statute that applies when an act that could reasonably be construed as in furtherance of the person's or entity's right of petition or free speech in connection with an issue of public concern. Whether the anti-SNAPP provision of a state can be used in a federal court is part of a case currently in the Georgia courts, in which a plaintiff contesting what he considered defamatory information on CNN that cost him his job.[vi]

A casual look at First Amendment litigation during the last 10 years and what seems to be an increased use of false news to the point where it is harder to distinguish reality from fiction might be related. Perhaps the strengthening of the absolute no governmental interference interpretation of the First Amendment's Free Speech provision is also encouraging folks to say whatever they want, like Pastis' rat.

And, as Frederick Schauer, David and Mary Harrison, Distinguished Professor of Law at the University of Virginia, has noticed[vii], most recently there have been cases arising in which the Free Speech principle is clearly used as a tool to contest a regulatory scheme. For example, the Ninth Circuit in *Anderson v. City of Hermosa Beach*[viii], held tattooing is a "purely expressive activity fully protected by the First Amendment and a total ban on tattooing is not a reasonable time, place or manner restriction."

It is also being used to undercut the morale of an opponent. Attorneys for Worthington, Ohio-born neo Nazi Andrew Anglin filed a motion to dismiss a federal lawsuit against Anglin's the Daily Stormer saying that the anti-Jewish slurs and trolling call was an expression of free speech without actual harm. The suit was filed by the Southern Poverty Law Center on behalf of a Montana Jewish woman trolled after protesting an action of a neighbor, whose son is Richard Spenser, a leading neo Nazi.

In contrast to Schauer, Floyd Abrams, perhaps the greatest litigator of First Amendment issues in our time, applies a

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purist, strict approach to the Amendment, one that sets the speech principle expressly beyond the reach of the government, be that speech expressed by naked dancing, burning a flag, showing a film of a person squishing an animal, allowing children to access an extremely violent video game, screaming in the face of a woman walking into an abortion center or giving $100 million to support a candidate. The government may not prohibit expression simply because it disagrees with the message or the method of delivery.

Speech regulation undermines equality, Abrams writes in *Soul of the First Amendment: Legal Issues from the Adoption of the Bill of Rights*. In his essay-like short book, Abrams focuses on the words he considers to be the core of the First Amendment, "the abridging of freedom of speech or of the press," and the Supreme Court's interpretation of those words. To Abrams, the freedom of speech protected by the First Amendment, makes it "what may well be the most honored and least understood addendum to the US Constitution." In the book, Abrams compares the US interpretation of the free speech clause to European and Canadian protection of speech and traces its history from its origin to the Pentagon case he argued to when he litigated *Citizens United v. Federal Election Commission*[ix], representing Senator Mitch McConnell.

Schauer, however, has consistently supported a balancing test – the coverage of a particular type of speech to the protection for that speech determined by the value of a category of speech against the harm it is doing,[x] with some actions and utterances totally excluded from the definition of "speech." He does not support an absolute free speech mandate. As a result, he would not treat an advertisement in the same manner as a political speech, nor would he treat an obscene utterance as even qualifying as covered by the First Amendment. As to a video of folks squishing animals, or a law to keep violent video games out of the hands of children, he would not consider them pure speech and would have allowed their regulation.

Schauer's not the only one to point out the relatively new legal strategy being used to attack governmental regulations – the First Amendment limits speech or expression argument. Heather K. Gerken, Dean and Sol & Lillian Goldman Professor of Law a Yale Law School, at the 2014 Marquet University Law School Boden Lecture[xi] argued that *Citizens United* not only made it easier to donate to candidates, strengthened dark money's power, pushed our current party system toward a system dominated by powerful groups outside the formal party structure, but, most significantly, it cut into Congress' power to regulate.

So, Pastis' rat has, perhaps, come to an understanding about our current speech. On one hand, the absolute free speech doctrine keeps the government totally out of our speech, no matter how broadly we draw it. At the same time, the absolute nature of the argument, with the resulting withdrawal of support for governmental entities regulating what used to be considered outside of speech, or was not even in existence until recently like violent games, is freeing folks to say harmful, hateful things as well as create false facts. Do we balance these and find the least harmful solution for our democratic system, or do we go for purity?

Yes, rat, lying takes far less time than does check verification. But, it sure undermines our democratic system.

[i] Columbus Dispatch, November 27, 2017, E3.
[ii] Houghton Mifflin Harcourt 2017
[iii] Pantheon Books 2017.
[iv] Penguin Books 2017
[v] Hill and Wang, New York 2015
[vi] *Atlanta Humane Society v. Mills; Davide Carbone v. Cable News Network* (February 15, 2017) Case No 1:16-CV-1720-ODE
[vii] The Politics and Incentives of First Amendment Coverage, 56 Wm and Mary L.Rev 1613 (2015).
[viii] 621 F.3d 1051, 1061-68 (9th Cir. 2010).
[ix] 558 U.S. 310 (2010),
[x] The Politics and Incentives of First Amendment Coverage, 56 Wm and Mary L.Rev 1613 (2015).
[xi] https://law.marquette.edu/assets/marquette-lawyers/pdf/marquette-lawyer/2014-summer/2014-summer-p10.pdf

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Hate Speech and the First Amendment

BY SUSAN GELLMAN

It's a confusing time in the Free Speech biz. Free speech and hate speech are topics in the news and in popular discourse, but not because of changes in the law or even proposed changes (not that no one is asking for change, just that the suggestions are the usual ones to carve out an exception for "hate speech").

When the President and his inner circle are the ones generating, facilitating and condoning harmful speech, dickering over jurisprudential concerns is the familiar Titanic deck chair rearrangement. Social, policy and political questions loom much larger than legal ones.

But the unprecedented context doesn't change anything for the constitutional analysis. No one has yet come up with a legally workable definition of "hate speech," let alone a constitutional justification for the content and even viewpoint discrimination such an exception would require, not just incidentally but as its central purpose. Punishing and proscribing government-disapproved political and social ideas is exactly what the First Amendment prohibits, even though that can be hard to swallow when the ideas at issue are widely considered repellent and even dangerous – often for very good reason.

This point of friction should make us First Amendment folks take a step back – not in the sense of advocating change in the constitutional analysis (although some people do; the ACLU is reevaluating its policies on whom it will represent), though. Rather, it is time for us to acknowledge more plainly the costs of vigorous protection of hateful speech – and, especially, who is paying them.

Freedom isn't free, we love to say, and it's true. But it's really easy to mouth that truism and ignore that the cost of freedom is not usually equally borne by all of us. That's true in a lot of contexts, from military service to affirmative action. Someone is bearing the burden disproportionately or entirely to protect or correct a shared problem.

Sometimes it seems fair, like asking the super-wealthy to pay more than poor people for public improvements or beautification programs. Other times it seems more objectionable, say to a white male college or job applicant who feels he is unfairly carrying the burden of correcting the legacy of slavery.

That's reality. No matter how hard we try to avoid it, we know that there will always be some people getting the short end of just about any policy stick.

In the First Amendment context, that can take the form, for example, of people who quite legitimately feel not merely offended, but outright intimidated, silenced and marginalized by bigoted speech. It comes up when people see athletes kneeling during the national anthem and feel, logically or not, an insult to veterans. When government takes down Christian symbols or slogans or Confederate monuments, and even those who understand the reasoning feel that their culture, identity and history are being condemned even as they are urged to celebrate that of others.

So the argument is often raised that as the speech at issue has so little if any value, and the harm it causes is so real, government ought to be able to prohibit and punish it. Some countries do that. But then, some countries prohibit and punish speech that criticizes the government, promotes homosexuality or blasphemes. Our country's choice thus far has been to refuse to hand that power to choose among ideas to the government, even for good motives. We in the First Amendment lobby have always considered that the wisest policy; if only because we have long ago concluded that there can't be a coherent principle that could not be abused and even turned around 180 degrees from what was intended.

The mistake we have made is to stop there and say, tacitly, "That's the legal answer; live with it."

It's time to say that although we aren't changing our view on how the First Amendment should work, even for harmful hate speech, we do care about whom it is hurting and how. Someone is paying the price; while we cannot always avoid that, we must acknowledge it, we must appreciate it, we must search for other ways in which to ameliorate it. That's hard when we don't agree with them. But it's just as important, in political as well as human terms.

When someone else is paying the price for everyone, and we don't even acknowledge it, let alone appreciate it, sooner or later, one way or another, they are going to hand us the bill.

"It's time to say that although we aren't changing our view on how the First Amendment should work... we do care about whom it is hurting and how. Someone is paying the price.

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The Johnson Amendment and Religious Freedom of Speech

BY PROFESSOR DAVID STEBENNE

A version of this article originally ran in the Huffington Post on February 2, 2017

Last year, President Trump announced that he intends to "destroy" the Johnson Amendment, which turned heads in the nation's houses of worship. The Johnson Amendment, enacted in 1954, changed federal tax law to discourage pastors from engaging in partisan political activity.

The central concern of the measure's sponsor, then Senator Lyndon Johnson of Texas, was that right-wing pastors would speak from the pulpit against his candidacy for re-election that year, when he faced a challenge from a conservative Democrat in the Texas Democratic senatorial primary.

With the passage of the Johnson Amendment, as it became known, engaging in that kind of partisan political activity could lead a church to lose its tax-exempt status. That is, at least in theory, a powerful deterrent because the nation's houses of worship are aided in attracting contributions by having tax-exempt status.

The Johnson Amendment wasn't very controversial when it became law, but it has become more so in recent decades, especially among some of the evangelical churches strongly supportive of the Republican Party. Even so, repeal of the Johnson Amendment was not high on the religious right's list of legislative objectives in 2016.

The impetus for this change appears to have come from Donald Trump himself, in response to his discovery that churches of that kind were inhibited by the law in advocating directly for his election. Like some of Trump's earlier remarks in other, related areas, advocating for the end of the Johnson Amendment reflects a view of church-state relations that is different from the one the courts have typically embraced since the 1960's. To President Trump, America is "a nation of believers," whose free-speech rights ought to be sacrosanct.

In the case of the Johnson Amendment, abolishing it might not change as much as Trump or his critics think it would. The Amendment has almost never been enforced by the IRS, even in the law's early years.

One of the most famous examples came in October 1960, when Martin Luther King, Sr., the pastor father of the famous civil rights leader, publicly signaled – perhaps unwittingly – his intention to violate the Johnson Amendment. The catalyst for his statement was the reaction of the two major-party candidates for president that year, John F. Kennedy and Richard M. Nixon, to the jailing of Martin Luther King, Jr. for a parole violation. A Georgia judge ordered King sent to a state penitentiary in a remote area of rural Georgia, something that led King's wife, Coretta Scott King, to fear she would never see him alive again.

"What abolishing the Johnson Amendment would really do, it seems, is to increase pressure on pastors from members of their congregations to make partisan political statements from the pulpit.

Civil rights leaders associated with King appealed for help. Nixon decided to do nothing publicly, but Kennedy telephoned Mrs. King, pledged his assistance in getting her husband released and then let the national media know about the call, saying "she is a friend of mine." Kennedy then instructed his brother Bobby to contact the judge and make the case for King's release, given the potential danger to him from other inmates and guards. The judge relented and ordered King's immediate release. It is distinctly possible that action saved Martin Luther King, Jr.'s life. It is also possible that the Kennedys' intervention saved another life, in that Coretta Scott King was seven months pregnant at the time, and so upset that some family members feared she might miscarry.

For those reasons, Martin Luther King, Jr.'s father, a prominent pastor in Atlanta known informally as "Daddy King," then announced at a mass meeting at Ebenezer Baptist Church that (having earlier decided to vote for Nixon) he was switching to Kennedy. At that meeting, which was reported in both the national print and broadcast media, Daddy King went on to say that "I've got all my votes and I've got a suitcase [of them, meaning at his church], and I am going to take them up there [the local precinct] and dump them in his [John Kennedy's] lap."

This was a hugely consequential action, politically, in that Kennedy had been blacks' least favorite candidate during the Democratic presidential primaries and did not, until that moment, enjoy enthusiastic backing among black voters (most of whom lived in the urban North). It is no exaggeration to say that Daddy King's statement probably altered the outcome of the election, which Kennedy won very narrowly on the strength of a better than 70-30 split among black voters in such key swing states as Illinois and Michigan. The Kennedy campaign heavily publicized King, Sr.'s remarks, which had a very big impact on black voters' choice in the presidential race. Even so, the Johnson Amendment was not used against Daddy King's church.

The basic pattern of not enforcing the Johnson Amendment has persisted over the 60 plus years of its existence. Only once in all that time has it ever been applied to a house of worship. It isn't clear that the Internal Revenue Service (IRS) devotes substantial resources to investigating complaints about Johnson Amendment violations.

What the law seems to have done, instead, is to give pastors – who typically don't want to engage in partisan political

sermonizing – a persuasive reason for why they don't do so, even when members of the congregation wish they would. (Pastors are usually concerned that partisan political statements from the pulpit could divide congregations.)

So, what abolishing the Johnson Amendment would really do, it seems, is to increase pressure on pastors from members of their congregations to make partisan political statements from the pulpit. That is a very unattractive idea to most leaders of the nation's houses of worship, and such a change in the law is not likely to be supported by most of them. Given that resistance, abolishing the Johnson Amendment seems unlikely to pass in Congress.

What, then, is the real significance of President Trump's recent statement on this subject? More than anything else, it appears to reflect his determination to signal his administration's support for religious institutions generally, even if the specific way of doing that doesn't seem likely to succeed, or, if it does, to produce the outcome he seeks. What Donald Trump appears to want, above all, is to restore the central place of religion in the public sphere, which has seen less of it in recent decades. Finding broadly acceptable ways of accomplishing that goal remains, however, a daunting challenge for him and his supporters.

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Life Outside the Law

You'll Never Regret

Moving (Your Body) More

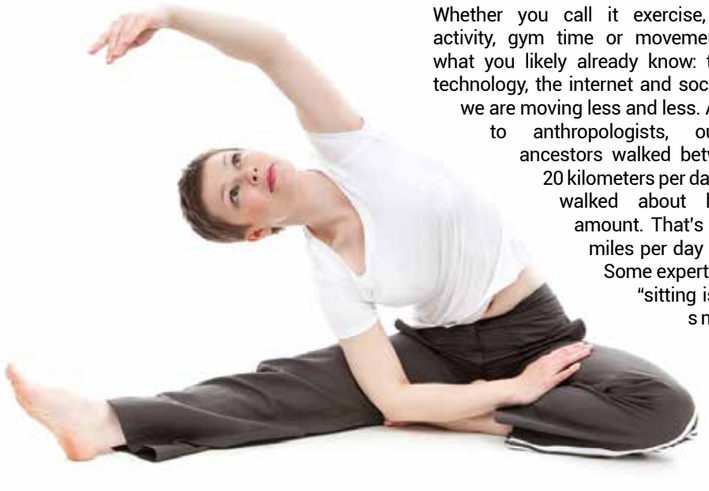
BY KATY TOMBAUGH

The Physical & Mental Benefits of Exercise Are Many—Here's How to Make It Happen

Adulting is hard. It's joked about, but demands of your time and energy at work and home are *real*. Busy, working adults in high-stress roles continue to struggle to find solutions for consistent workouts and healthier eating.

You likely know some of the benefits of consistent exercise or you may know it's needed for your sanity, but how does one "fit it in" to enjoy all the physical, mental and emotions benefits of exercise?

First, let's reconnect to the physiological, physical and mental benefits of moving more.



When you are physically active:

Blood flow increases across body tissues; this increases production of a molecule called nitric oxide allowing the formation of new blood vessels. These blood vessels allow for better food distribution and waste removal. (Food for thought: Allow your body to naturally detox itself.)

Your brain produces more Brain Derived Neurotropic Factor also known as BDNF. This is like Miracle Grow for your brain – it encourages neurons to connect and the formation of new cells. Exercise will not only allow you to retain important human movement capabilities (walking, squatting, getting up and down off the floor, supporting your own body weight), it will also instantly improve your mood while strengthening cognition in the long run.

Whether you call it exercise, physical activity, gym time or movement, here's what you likely already know: thanks to technology, the internet and social media, we are moving less and less. According to anthropologists, our male ancestors walked between 10-20 kilometers per day. Women walked about half that amount. That's nearly 12 miles per day for some. Some experts say that "sitting is the new smoking" given the dramatic increases in health risk Americans are experiencing due to prolonged, extensive sitting. Another way to look at it: we are becoming experts at sitting. Is that your life goal? Or would you like to enjoy so much more now and into your retirement?

The global addiction to technology is not only impacting physical health but also mental health. While it would seem that people are now more connected, excessive time on devices is actually perpetuating stress, anxiety and depression and causing changes to brain matter.

Brace yourself for this next stat. According to the Centers for Disease Control and Prevention, in 2008 (the most recent year for which data is available), some 25 percent of the U.S. population reported zero leisure-time physical activity.

According to research published on Science Daily: "Exercise is a magic drug for many people with depression and anxiety disorders, and it should be more widely prescribed by mental health care providers, new research suggests. An analysis of dozens of population-based studies, clinical studies and meta-analytic reviews related to exercise and mental health confirmed exercise programs reduce depression and anxiety for people who can't receive traditional therapies."

Self-Assessment

So, while your motivation for why you are choosing to exercise is a personal one, here are important consideration for everyone:

1. How consistently are you exercising?
2. How much are you challenging yourself to build and grow your capacity?
3. Historically, what have been some sticking points or obstacles related to your exercise program?

Next, with these answers in mind, consider what you need most. Are you an exercise enthusiast that has gotten a little off track? Are you bored? Are your workouts too easy? Do you have any fun? Are you struggling to get started again? Are you feeling frustrated?

Exercise enthusiasts may just need a little novelty (i.e. something new or trending) or a group class to reignite their motivation and commitment. Those who are newer to exercise, or those who were once active but now deconditioned, need to find something they look forward to while being mindful not to do "too much too soon". Injury or excessive soreness can kill motivation at first.

For those who loathe the gym, a movement mindset may feel less intimidating. Here are 10 ways to create multiple movement moments throughout the day:

1. Go to the playground and get on the equipment: hang, climb and crawl.
2. Use furniture less often. Challenge your muscles and joints to sit on the floor.
3. Try a climbing wall.
4. Sign up for a group dance or martial arts class.
5. Change positions often.
6. Play games–tag, kickball, volleyball, hide & seek, relays, obstacle course, etc.
7. Practice adult "tummy time". Most adults need significantly more core work, and not just from a "crunch" position. Pilates and yoga are great for getting a few ideas.
8. Get upside down a few minutes each day with exercise like forward bends, downward facing dog and handstands at the wall.
9. Do more floorwork exercises. This is just the weight bearing exercise you need.
10. Challenge cultural norms. Why not log additional steps or do a few exercises at the airport while you're waiting for that next flight?

> **"Excessive time on devices is actually perpetuating stress, anxiety and depression and causing changes to brain matter.**

Craft Your Plan

Finally, consider how you want exercise to fit into your lifestyle:

1. What do you want to be able to do or enjoy (now or in the future)?
2. What is your goal? Be super specific.
3. Why is it important to you?
4. What is your affirmation? Write a simple statement. (Ex: I am an elite athlete.) Hint: What do you want to believe and what will keep you focused on what it will feel like to reach that goal?

You'll never regret moving more. Reconnect with your "why" and work toward a plan that you can execute with consistency. Know that everyone has a rough week or two and it's how you respond to that time period that will most impact your results. Will you throw in the towel, or resolve to pick yourself back up again?

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Life Outside the Law

Fifty-Year Anniversaries Abound in 2018

BY HON. DAVID E. CAIN

Fifty years can make a big difference in how one sees things. Perspectives can change. And thinking of all the events that occurred in 1968 almost makes my head spin.

The Vietnam War was vastly escalating, although the president (Lyndon B. Johnson) was trying to run for re-election on a platform of peace. In January 1968, The Tet Offensive, by 85,000 North Vietnamese and Viet Cong against South Vietnam and the United States, caused many Americans to start questioning our involvement there.

Also in January, North Korea captured a Navy intelligence ship, the USS Pueblo, sparking a crisis that lasted several months until the 82 surviving crew members were released from a POW camp.

Robert F. Kennedy announced his campaign for president in mid-March. LBJ dropped out of the presidential primary race on March 31. He had quietly authorized a troop surge in Vietnam to 549,000 earlier that day.

In April, Martin Luther King Jr. was assassinated in Memphis. In June, Kennedy was assassinated in Los Angeles. In early August, Richard M. Nixon won his party's nomination for president amid race riots in Miami and violent unrest that quickly spread to Chicago and Little Rock.

The Democrat National Convention in Chicago in late August was surrounded by anti-war rioting so fierce – and a police response so strong – that the newsreels looked almost as bad as the killing fields in Southeast Asia. Half a century later, most of us realize the war protesters had good cause; the public was being profoundly deceived.

But some good things happened in 1968, as well.

The Columbus Bar Association began a year-long celebration of its 100th Anniversary. The Modern Courts Amendment passed by a wide margin in the May primary election (although I had no idea of what it meant at the time). Boeing introduced the first 747 jumbo jet and the Apollo 8 was the first manned aircraft to orbit the moon.

Mary Ann and I got married in June 1968. The Modern Courts Amendment, among other things, includes an age limit for judges and means that I cannot run for re-election in 2018. But there is no term limit on the matrimony.

Earl F. Morris, one of the founders of Porter, Wright, Morris & Arthur, was serving as president of the American Bar Association (1967-68) and was greatly involved in the movement for judicial reform in Ohio. Four of five major points in the discussion that had gone on for several years actually made it to the statewide ballot in the proposal known as Issue 3: Local court reorganization, statewide supervision of the judicial system, rule-making and the mandatory retirement provision.

The original proposal – and the ballot-placement legislation as introduced – included provisions for the "Missouri plan" to be used for the selection of judges of the Supreme Court and Courts of Appeal, with the legislature being authorized to extend it to trial judges. The so-called Missouri plan provides that when a vacancy occurs, a statewide non-partisan commission selects three nominees and the governor thereafter appoints one of them. However, the Ohio House of Representatives deleted that part of the proposed constitutional amendment before placing it on the statewide ballot. Something similar to that actually made it to the ballot in 1988 but failed by a large margin. And in 2012, statewide voters strongly rejected a proposal to raise the mandatory retirement age to 75 and lengthen judicial terms from six to 10 years.

The Modern Courts Amendment gave administrative authority to the Supreme Court over all the courts of the state. That means, among other things, the Supreme Court (and newly created administrative director) shall make rules to require uniform record keeping for all courts as to the number of cases filed, resolved and pending; the chief justice can appoint judges (active or voluntarily retired) to temporarily sit in other counties as needed and shall rule on issues of disqualification of judges. The Supreme Court also became authorized to issue rules of practice and procedure for all criminal, civil and appellate matters (to replace the ancient code-pleading that was still in effect).

The Modern Courts Amendment got my attention a couple years later, while I was a law student and member of the Board of Editors that produced the first volume of the Capital University Law Review. I was interested in writing about making it easier to remove aged, draconian judges from office, but found out the 1968 ballot issue had made that subject less appealing. My "comment" (published in Volume One, Number One at pages 145 to 159) became an argument to give an ordinary citizen standing to file a petition for a writ of quo warranto to challenge the title to office of any public official. As is typical in a majority of states, Ohio statutes provide that the attorney general or prosecuting attorney may bring an action for quo warranto – on their own or another person's relation. Or, "a person claiming to be entitled to a public office unlawfully held and exercised by another" may file for such a writ (ORC Section 2733). The petition must be filed in a court of appeal or the Supreme Court. A citizen cannot get mandamus to force a filing by a reluctant attorney general or prosecuting attorney because the authorizing statute is discretionary, the Ohio Supreme Court has held. I believed that access to such a remedy was far too limited. However, a majority of courts around the country were saying that it would be against public policy to permit a public officer to be harassed with proceedings to try his title from the beginning to the end of his term. Fifty years later – including 31 years on the bench – and I agree with the above reasoning. My law school article must have been based on youthful idealism.

Our current Chief Justice, Maureen O'Connor, has recognized that the Supreme Court should periodically refine and expand its methods of requiring and using caseload statistics from around the state. The uniform record-keeping provision in the Modern Courts Amendment drew the following comment in 1967 from the Ohio Legislative Service Commission: "Current statistics are limited… numbers alone do not give the proper information necessary to determine the scope of business before the courts."

The Chief Justice recently spoke in a similar vein when addressing workload studies that have been conducted in a majority of states in an effort to make sure the public is not paying for more judges than needed in areas of shifting populations and shrinking economies. The Council of State Governments is promoting a "data-driven management tool" for determining the need for judicial resources.

"Another hallmark in 1968 was the CBA's publication of a hard-bound "register" intended as a personal record of the members of the CBA.

Cases are divided into types, and then each type is weighted according to the amount of judicial time typically needed to handle such cases. Multiply the annual filings for each case type by the corresponding case weight. Add them all up, and then divide that number by the judge-year value (the amount of time each judge has available in a year). That gives you the total number of judges needed.

Chief Justice O'Connor pointed out that there is "only a marginal correspondence between our case numbers and our amount of work. We are not just calling the balls and strikes. We are working harder because we are required to do more things. We are wearing more hats."

A good example of "figures lying" is with foreclosure cases. Those have gone down by more than 50 percent over the last ten years and have helped pull our overall caseloads down. But they only took a minimal amount of time compared with other matters. The numbers are thusly misleading.

Our current system of judicial expansion has somehow worked fairly well during my 31 years on the Common Pleas bench. The court had 13 judges in 1986 and currently has 17. The number of pending cases per judge averaged 602.85 at the end of 1986. The average per judge on the last monthly report available at this writing was 603.31. I inherited 637 pending cases in January, 1987, and I now have 630. Making progress!

Another hallmark in 1968 was the CBA's publication of a hard-bound "register" intended as a personal record of the members of the CBA. The register featured photos, law schools attended, graduation dates and law firm affiliations. I still have a copy that was given to me when, as a Dispatch reporter, I covered the final event of the CBA's anniversary celebration in May 1969. A dinner was held (in conjunction with the OSBA's annual meeting) at the Neil House with U.S. Supreme Court Justice Byron (Whizzer) White as the featured speaker. Thumbing through the register's pages – bearing a total of 1,145 head shots – is now a trip down memory lane. Many of the attorneys were just beginning outstanding legal and political careers. While most are deceased, several are still practicing law.

And I contemplate the title of one of my favorite songs, "Ain't It Funny How Time Slips Away."

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Life Outside the Law

Lawyers *with* Artistic License: Bryan K. Prosek

BY HEATHER G. SOWALD

A united Earth in the year 2200. Battles raging throughout the galaxy for a limited amount of hilaetite crystals which can either be used for good or evil. How will Earth deal with this fight? Can the hero, Jake, avenge his uncle's murder committed by Romalor, a man seeking the crystals for his own evil purpose? Will Jake win Diane's love? To find out if Jake can save the galaxy and get the girl, read *Earth United*, which is available for purchase on Amazon.com.

The creator of this sci-fi world is business attorney and Steptoe & Johnson law partner, Bryan K. Prosek. However, nothing in Bryan's upbringing or occupation would lead anyone to guess at his vivid imagination and ability to create futuristic worlds at war and at play.

He grew up near Coshocton, with a homemaker mother and a high school administrator/coach father. He was a typical athletic student who ran cross-country and track, and played basketball. Bryan is a double Buckeye, with an undergraduate degree in Accounting. He says that by the age of 9, he had decided, without any role model in his family or community, that he wanted to be a business attorney when he grew up.

Surprisingly, Bryan does not spend time reading novels, although he does enjoy listening to books on tape while commuting between downtown and his home in Blacklick. This novelist says that he has always had a great imagination, and even as a child he would amuse himself for hours by creating and then playing out space adventures.

When his two now-teenage children, Luke and Lucy, were young, he would write for an hour or two after they and his wife, DeAnne, went to bed. First, Bryan plotted out the sci-fi novel's storyline; then over the course of the next four years, he filled in the characters and actions of the futuristic story, which later grew to be a 220-page novel. It then took him another year of on-and-off attempts to find a publisher; he ultimately landed with SynergEbooks. The publisher had him hire a sci-fi editor, who suggested rearrangement of some chapters and to "show the story, not tell it."

After reworking and rewriting, the novel was published. Bryan then sought out reviewers for his manuscript so the positive reviews could be added to the book's back cover and, later, its website. After the book's publication in 2013, Bryan found that the real work began in arranging book signings and promotions. But, he only had so much time available to devote to this hobby, since he was busy with his family, law practice, coaching his home-schooled kids' soccer teams, playing pick-up basketball in the early mornings at the YMCA and coaching in his Nazarene Church's basketball program.

> **"By the age of 9, he had decided, without any role model in his family or community, that he wanted to be a business attorney when he grew up.**

Bryan would love to publish more sci-fi novels. He has begun creating the plotline for a sequel to *Earth United*, while also working on the storyline for a third earth-based sci-fi novel. He fantasizes that someday he could write sci-fi full time, continuing his creation of futuristic worlds.

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Jury Verdicts

Civil Jury Trials

Franklin County Common Pleas Court

BY MONICA L. WALLER

Verdict: $179,121.95. Breach of Contract.

Defendant Brookwood Academy, Inc. operated as a community charter school under the sponsorship of the Reynoldsburg City School District Board of Education. Brookwood's student body consisted of all students with special needs. However, Brookwood lacked the capacity to serve those special needs students who suffered from severe emotional and psychological disabilities. Therefore, in 2014, Brookwood entered into a contract with Plaintiff Baybrook & Assoc., LLC, dba Highlands Community Learning Center to provide those services on Brookwood's behalf. Brookwood agreed to pay Highlands monthly for the costs to educate those students at a rate equal to the funding Brookwood received from the State of Ohio for the education of those students less an agreed upon sum. Highlands alleged that Brookwood continued to receive funding from the State of Ohio, but fell behind in its payments to Highlands. Highlands claimed that Brookwood then unilaterally terminated the contract before the 2015-2016 contract was to expire. Brookwood claimed that Highlands was in violation of many of the requirements of the Ohio Department of Education, but refused to provide information to Brookwood that they needed to document its records. Brookwood denied that it continued to receive funding from the State of Ohio for the students placed at Highlands' facility and claimed that Highlands engaged in a systematic plan to take Brookwood's students by defaming Brookwood and using Brookwood's records to effect a transfer. Brookwood claimed that it declared the contract in default because of Highlands' lack of cooperation. Brookwood filed a counterclaim against Highlands claiming it had breached the contract causing Brookwood $100,000 in damages. Highlands claimed it was owed $194,479.56 and sought its attorney's fees. There were no settlement discussions before trial. Length of Trial: three days. Counsel for Plaintiff: Dennis L. Pergram. Counsel for Defendant: Roger Warner. Magistrate Ed Skeens. Case Caption: *Baybrook & Associates, LLC v. Brookwood Academy, Inc.*, Case No. 16CV-03-2426 (2016).

Verdict: $4,880.00. ($3,630.00 in economic damages, $1,250.00 in non-economic damages). Automobile Accident.

On July 18, 2013, Plaintiff Kimberly Perry was stopped at the traffic light on the Broad Street exit from State Route 315 southbound when she was rear-ended by a vehicle driven by Defendant Anthony Felice. Mr. Felice was cited for failure to maintain an assured clear distance ahead. After the accident, Ms. Perry had a headache and felt pain in her neck and lower back. The following day, she saw her primary care physician and then followed up a few days later with a chiropractor. She continued to receive chiropractic treatment through January 22, 2014. Mr. Felice conceded negligence but disputed the nature and extent of Ms. Perry's injuries and that the six months of chiropractic care was reasonable and necessary. Medical Specials: $6,716.13 (amount accepted as payment). Last Settlement Demand: $12,500. Last Settlement Offer: $7,500.00. Plaintiff's Expert: Paul Valenti, D.C. (chiropractor). Defendant's Expert: None. Length of Trial: two days. Counsel for Plaintiff: Andrew Schabo and Elizabeth Watson. Counsel for Defendant: Scott Norman. Magistrate Jennifer Hunt. Case Caption: *Kimberly Perry, et al. v. Anthony Felice, et al.*, Case No. 15 CV 5614 (2016).

Verdict: $4,030.03. Automobile Accident.

On October 15, 2014, Plaintiff Gebyanesh Azanaw was driving through the intersection of Main Street and Hamilton Road when her vehicle was struck by Defendant Jazmyne Monroe. Ms. Azanaw's children, Abraham Abera and Bruk Abera, were passengers in Ms. Azanaw's vehicle at the time of the collision. Ms. Azanaw and her children did not receive medical treatment at the scene of the incident. However, all three plaintiffs testified that they were in significant pain. Approximately 12 days after the accident, the family began treating with a chiropractor, Wente Moeller, D.C. They continued to receive chiropractic treatment with Dr. Moeller until mid-December of 2014. Dr. Moeller diagnosed Ms. Azanaw with cervical, thoracic and lumbar sprains and billed her $1,160 for the treatment. Dr. Moeller diagnosed Abraham Abera with cervical, thoracic and finger sprains and billed $949 for the treatment that she provided him. She diagnosed Bruk Abera with a cervical sprain and billed $572 for his treatment. According to Ms. Azanaw's repair estimates, the collision caused $2,030.03 in damage to her vehicle. Ms. Monroe admitted that she failed to yield the right of way and was the cause of the accident. However, she claimed that her vehicle was traveling no more than 5 mph at impact and that Ms. Azanaw's vehicle was traveling at no more than 10 mph. According to Ms. Monroe, the impact caused a minor scuff on the bumper, which was not repaired. Ms. Monroe agreed to pay $2,030.03 for the property damage, but disputed Plaintiffs' personal injury claims because she believed the Plaintiffs were exaggerating their symptoms and questioned the credibility of Plaintiffs' expert. The jury awarded Plaintiff Gebyanesh Azanaw $1,442.00, which included $692 in economic damages and $750 in non-economic damages. The jury awarded Plaintiff Abraham Abera $1,363.00, which included $613 in economic damages and $750 in non-economic damages. The jury awarded Plaintiff Bruk Abera $1,195.00, which consisted of $445 in economic damages and $750 in non-economic damages. The $2,030.03 in property damage that Ms. Monroe agreed to pay Gebyanesh Azanaw was added to the final judgment by the Court. No information about settlement negotiations was available. Length of Trial: three days. Plaintiff's Expert: Wente Moeller, D.C. (chiropractor). Defendant's Expert: None. Counsel for Plaintiff: Steve Mathless. Counsel for Defendant: Jonathan Preston. Visiting Judge Richard Sheward. Case Caption: *Gebyanesh Azanaw, et al. v. Jazmyne Monroe, et al.* Case No. 16 CV 779 (2017).

Verdict: $3,087.05. Automobile Accident.

On January 24, 2014, Plaintiff Jack Kamnikar (11) and his parents, Plaintiffs David and Laurie Kamnikar, were in their vehicle stopped in front of the Chiller hockey rink in Dublin. Jack realized he had left his hat in the rink and was beginning to exit the vehicle to go back in and retrieve it when, according to the Kamnikars, the vehicle was struck in the rear by a vehicle driven by Defendant Cameron Fiorita. Plaintiffs asserted that Cameron Fiorita admitted fault at the scene of the accident and explained that he must have been texting, playing with his phone or not paying attention. Jack Kamnikar went to his family doctor the day after the accident with complaints of a headache. The physician ordered a head CT, which was negative, but diagnosed him with a mild concussion. Jack had a previous concussion. He was referred to the concussion clinic at Nationwide Children's Hospital, where he had been treated previously. He continued to receive treatment at the concussion clinic for approximately a month. The Kamnikars sued Cameron Fiorita claiming that he negligently caused Jack's injuries. Fiorita initially argued that he was not negligent because it was his recollection that the Kamnikar vehicle backed into him in the parking lot. Plaintiffs subsequently produced a surveillance video that contradicted Mr. Fiorita's recollection of the accident. The parties then stipulated that Cameron Fiorita was liable but reserved the issues of proximate cause and damages for the jury. Fiorita argued that Jack's concussion was not related to the accident because the impact was minimal. He argued that the concussion was related to an earlier sports-related injury. Medical Specials: $2,588.25 (amount accepted by providers). Last Settlement Offer: $5,128.00. Length

Continued on page 54

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Continued from page 53

of Trial: two days. Plaintiff's Expert: Robert Rodenberg, M.D. (sports medicine). Defendant's Expert: None. Counsel for Plaintiffs: James P. Connors. Counsel for Defendants: Ed J. Hollern. Judge David Cain. Case Caption: *David Kamnikar, et al. v. Cameron Fiorita, et al.* Case No. 14 CV 007708 (2016).

Defense Verdict. Automobile Accident.

On May 30, 2014 at approximately 11 p.m. at the intersection of North Glenwood Avenue and West Broad Street, a bicycle driven by 53-year-old Glenn Michael Barna and a refrigerated box truck driven by Defendant Nelson King collided, killing Mr. Barna. Mr. King reported that the light at the intersection was red when he approached it. He stopped, looked both ways, determined that nothing was coming and proceeded to turn right onto N. Glenwood Avenue. When he was most of the way through the intersection, he felt his rear wheels jolt. He looked into his rearview mirror and saw a pedestrian run into the area of the crosswalk. He stopped his truck and went to the intersection and found Mr. Barna and his bicycle laying in the road 15-20 feet beyond the intersection. Mr. Barna was pronounced dead at the scene. A Columbus Police detective investigated the accident and concluded that Mr. King had already entered the intersection when Mr. Barna crossed and struck the side of the truck just in front of the rear wheels. The detective concluded that Mr. Barna was at fault for the accident, not Mr. King. The administrator for the estate of Mr. Barna located two witnesses who were standing on the sidewalk near the intersection when the accident occurred. The witnesses were not interviewed by the detective because they left the scene before the detective arrived. The witnesses gave inconsistent testimony about whether the traffic light was red or green and whether Mr. King or Mr. Barna was the first to enter the intersection. However, one of the witnesses reported that Mr. Barna was struck by the front bumper of Mr. King's truck and that he hung onto the truck yelling for the driver to stop before he and his bicycle were pulled under the truck and he was run over by both the front and back wheels. The administrator of Mr. Barna's estate sued Mr. King and his employer, C.W. DeMary Services, alleging that Mr. King negligently operated the truck by failing to see and yield to Mr. Barna's bicycle. Mr. King and DeMary denied negligence and argued that Mr. Barna was the sole cause of his accident for violating a local ordinance prohibiting the use of bicycles on sidewalks and for failing to see and yield to Mr. King's vehicle, which he claimed was already turning when Mr. Barna entered the intersection. The jury found that Mr. King and DeMary were not negligent. Claimed Damages: No information available. There were no settlement discussions. Length of Trial: three days. Plaintiff's Experts: No information available. Defendants' Expert: Det. Michael McWhorter. Counsel for Plaintiff: Jonathan T. Tyack. Counsel for Defendants: Timothy J. Ryan. Judge Patrick E. Sheeran. Case Caption: *Adam Rinehart, Esq. v. Nelson King, et al.* Case No. 14 CV 012758 (2016).

Franklin County Common Pleas Court

Defense Verdict. Medical Malpractice.

On March 31, 2014, Plaintiff Zoe Kontes visited her primary care physician, Defendant Frederick C. Carroll, M.D. for a medication refill. While there, Ms. Kontes told Dr. Carroll that she was having some pain in her back stemming from an injury that she suffered while weightlifting a few months earlier. She told him that she had received two injections at the time of the injury that gave her some relief. Dr. Carroll offered her another injection and a prescription for physical therapy. Plaintiff claimed that Dr. Carroll told her the injection was Lidocaine and did not advise her of any risks or side effects. She also alleged that Dr. Carroll asked her to partially disrobe for the injection and did not offer her a drape or gown and did not have a chaperone in the room. Dr. Carroll administered the injection in Ms. Kontes' lower back. Approximately 30 days later, Ms. Kontes noticed that she had a depression or divot in her low back at the injection site. She was later diagnosed with a fat necrosis and told that it was caused by the injection. She returned to Dr. Carroll's office to question him about the injection. There was no notation of the injection in the chart, but Dr. Carroll advised her that he had given her Kenalog and Lidocaine. Ms. Kontes sued Dr. Carroll for malpractice alleging that Dr. Carroll fell below the standard of care in failing to obtain appropriate informed consent, for not following proper draping procedures when performing the procedure and for failing to properly document the procedure in his chart. Ms. Kontes sought compensation for the depression in her low back, which she claimed was permanent. Dr. Carroll asserted that he did inform Ms. Kontes that he was injecting Kenalog and that he properly informed her of the common risks and side effects. It was Dr. Carroll's position that the risk of fat necrosis from this type of injection is so exceedingly rare that the standard of care did not require him to discuss it with Ms. Kontes. He also argued that the depression in Ms. Kontes' back had resolved. The jury found that Dr. Carroll did breach the standard of care in failing to provide proper draping and a chaperone during the procedure, but concluded that the breach was not the proximate cause of any damages. The jury found that Dr. Carroll did not breach the standard of care with regard to informed consent. No medical expenses or lost wage information was presented at trial. Last Settlement Demand: $95,000. Last Settlement Offer: None. Length of Trial: three days. Plaintiff's Experts: Michael Hahalyak, M.D. Defendant's Experts: Mark Bibler, M.D. Counsel for Plaintiff: Douglas J. Blue. Counsel for Defendant: Gregory D. Rankin. Visiting Judge Dale Crawford. Case Caption: *Zoe Kontes v. Frederick C. Carroll, M.D., et al.*, Case No. 15 CV 2758 (2017).

Defense Verdict. Auto Accident

On September 2, 2014, 85-year-old Defendant Patricia Klecan was headed westbound on County Line Road in Westerville, Ohio toward State Street. She began to turn left from County Line Road onto State Street as a vehicle driven by Plaintiff Bernadette Kpaka was approaching on County Line Road headed eastbound. Ms. Kpaka swerved left in an attempt to avoid colliding with Ms. Klecan's vehicle, but struck the vehicle on the driver's rear side. Ms. Kpaka claimed that Ms. Klecan caused the accident by failing to yield the right of way. Ms. Klecan claimed that she would have had enough time to safely complete her left hand turn if Ms. Kpaka had been driving at an appropriate speed for the area and the road conditions. She claimed that Ms. Kpaka was driving in excess of 55 miles per hour in the rain in an area with a speed limit of 45 miles per hour. Ms. Kpaka went to the Westerville Emergency Care Center after the accident and was diagnosed with headache, cervical sprain/strain and left shoulder pain. She followed up with her primary care physician and a chiropractor who diagnosed her with cervical, thoracic and lumbar strain, left shoulder pain and headaches. She received approximately one month of chiropractic treatment. The jury concluded that Ms. Kpaka did not meet her burden of proving that Ms. Klecan was negligent. Medical Specials: $8,334.77 (reduced to $3,986.16 after write-offs). No information regarding settlement negotiations was available. Length of Trial: two days. Plaintiff's Expert: Yaw Ayesu-Offei, M.D. (primary care). Defendant's Expert: none. Counsel for Plaintiff: James Malek. Counsel for Defendant: Jonathan G. Preston. Magistrate Myron Thompson. Case Caption: *Bernadette Kpaka v. Patricia Klecan*, Case No. 15CVC12-10862 (2016).

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