Fall 2017 Special Edition:

**Haunting Legal Issues**

In this issue, *Columbus Bar Lawyers Quarterly* investigates haunting legal issues: from zombie legislation to artificial intelligence, sexual assaults to Venmo and stalking lawsuits to ongoing gun deliberation. This issue also examines law school employment, an Addiction Stabilization Center and a Women in the Profession Survey.
We’ve been prepping for your next case for nearly 50 years. And now, we are doing it from a brand-new research campus.

Being known for experience and expertise begins with seeking these qualities in the professionals you engage. The advances in technology continue to evolve rapidly, but no matter the level of change, it’s always the expertise and experience of extraordinary engineers, investigators, researchers and imaging sciences specialists that can join you in the courtroom to reveal the causes of vehicle accidents, product/equipment malfunctions and structural collapses.

The recently opened S-E-A 47-acre research campus marries time-tested methodologies with some of the most advanced techniques and groundbreaking innovations available for forensic analysis and product testing. Within the 111,000 sq. ft. of building space are: a vehicle accident simulator, biomechanical labs, candle labs, chemical labs and confidential high-bay testing suites. Outdoors, on the Campus, are: a vehicular test pad, fire-reconstruction facilities, and undulating topography for testing off-highway vehicles and equipment.

To support on or off-site testing, S-E-A has added a drone, 3-D laser scanners and the most advanced Imaging Sciences Practice Group in the industry.

The new Campus has the capacity to hold conferences, continuing education presentations, seminars and industry events for up to 300 people. The opening of the new Campus coincides with our expanded national footprint and advancement of regional office capabilities. We invite you to visit our north Columbus location at 7001 Buffalo Parkway.

For more information about S-E-A, including “Customized Testing,” call 800-782-6651 or visit www.SEAlimited.com.
Finding Happiness: Saving The Heart and Soul of Our Profession One Lawyer at A Time

BY LISA PIERCE REIZS

The lure of the legal profession: honorable, prestigious, challenging, lucrative, service to others, societal change. From our first days at law school, many of us were drawn to the profession believing that it would be highly rewarding and personally satisfying. However, as I talk with colleagues, friends and former law school classmates, I am struck by how many of these lawyers say they are tired, stressed and just plain unhappy with their careers. Many even say, if they had to do it again, they would not go to law school.

Study after study that I have reviewed confirms that many, many lawyers are very unhappy:

1. In a Johns Hopkins University study from 1990 of more than 100 occupations, researchers found that lawyers have the highest incidence of depression; estimated at currently 3.6 times greater than the general working population.
2. An ABA Young Lawyers Division survey indicated that 41 percent of female attorneys are unhappy with their careers.
3. It is estimated that the risk of suicide among lawyers is six times greater than the general population.
4. A 2016 study in the Journal of Addiction Medicine has found that 20 percent of licensed, employed attorneys in the U.S. consume alcohol at levels consistent with problem drinking.
5. Seven in ten lawyers recently responded to a California Lawyers magazine poll by saying that they would change careers if given the opportunity.

My own experience on the Columbus Bar Association Professional Ethics Committee (“PEC”) is consistent with these findings, too. In my 10 years on the PEC, most of the attorneys who came before the Committee were not the result of bad lawyers. Instead, most cases were rooted in other causes: inexperience, extreme stress, depression, mental health issues and substance abuse. Indeed, in my observation, there is a direct correlation between the factors which cause attorney unhappiness and those which contribute to lawyer discipline cases.

The legal profession mixes all the ingredients to make the perfect recipe for lawyer depression and unhappiness. To start, the profession attracts Type A overachievers; individuals who are used to and expected to excel, and who, right or wrong, feel they cannot show any weakness at any time. Add in the fact that the practice of law is demanding and extremely stressful. Combine that with long days and sleepless nights. Mix in billable hour requirements, client development pressures and the shrinking legal market. Fold in what is generally adversarial, often extremely stressful. Combine it with the loneliness of technology and the fact that we as attorneys can go days and days without human interaction. Finally, top it with the fact that lawyers, generally, are reluctant to ever ask for help. And, voila… you have one unhappy lawyer.

But in some lawyers, this unhappiness is culminating in debilitating depression – a hopeless despair that impacts every phase of one’s life – and, in its worst cases, is contributing to spikes in attorney suicide rates.

How can we attain happiness in the profession and perhaps save ourselves?

1. Set realistic and attainable goals both professionally and personally. Don’t get caught up in the mythical movie version of what the practice of law is “supposed to” look like.
2. Be yourself, not somebody else. Don’t undervalue who you are and the strengths you bring to your practice.
3. Realize that you will not win every case, and losses (and mistakes) are a part of life, but often make us better lawyers.
4. Do some pro bono work or volunteer for your favorite cause. It is always a good reminder of why you went to law school. A good place to start is the Legal Aid Society of Columbus’ Volunteer Resource Center: www.columbuslegalaid.org/get-involved/attorney-attorney-pro-bono-application.
5. Channel stress into healthy pursuits, like a good tennis game. I went to law school. A good place to start is the Legal Aid Society of Columbus’ Volunteer Resource Center: www.columbuslegalaid.org/get-involved/attorney-attorney-pro-bono-application.
6. Seek that ever-allusive work-life balance… but for real this time.
7. Put down your phone, laptop or tablet and be with friends and family.
8. Know the warning signs of depression and substance abuse, and critically evaluate yourself.
9. Recognize when enough is enough, and seek help when you need it.
10. Resources are available: call the Ohio Lawyers Assistance Program at (844) 556-1128.

How can we help our colleagues and friends?

1. Know the warning signs for depression, mental illness and substance abuse.
2. Be willing to intercede for a colleague or friend when it is clear they can’t do it themselves.
3. Don’t be sworn to secrecy; make the call.
4. Call the Ohio Lawyers Assistance Program at (844) 556-1128.
5. Never be afraid to ask a friend or colleague if they have contemplated suicide.
6. Call the Suicide Prevention Lifeline at (800) 273-8255.
7. Stay with your friend or colleague until help arrives.

We work in an honorable and noble profession. We are the guardians of democracy and agents of social change. We are counselors, problem-solvers and sometimes even superheroes to many. But, sometimes, we must step back from the stress and demands of our jobs to take care of ourselves and each other, too. We, as lawyers, deserve to be happy.

Sources:
1. Ohio Legal Assistance Program (www.ohiolawyersassistance.org)
8. “High Rates of Alcohol Abuse, Depression Among U.S. Attorneys, study says,” by Alexis Ekendal-Ruiz, Chicago Tribune (February 3, 2016)

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Bar Insider

WLFC Celebrates 75 Years with Women in the Profession Survey

BY CELIA KILGARD-SCHNUPP

“There is a settled gender bias at my firm.” “...called ‘honey’...[and] told I was hired [based on my looks]”

“Statements [were made] that male associates need more stability in their paychecks because they need to support their [families].”

“Others thought my client was the lawyer their [families].”

“Assignments are provided to male associates first, unless they are unavailable.”

“Male opposing counsel have treated me associates first, unless they are unavailable.”

“These are only a few of the statements that were made by women lawyers in the 112 pages of comments from a recent anonymous survey that was developed and distributed by the Women Lawyers of Franklin County (WLFC). Established in 1942, WLFC is celebrating its 75th anniversary in 2017 as an organization striving to address the professional needs and concerns of women lawyers in the Greater Columbus area. In furtherance of this mission and to celebrate the history of the organization during this milestone anniversary, 2016-2017 WLFC President Ashley Oliker and Women in the Profession Chair Celia Kilgard-Schnupp created a survey to gauge the experiences, concerns and issues facing female attorneys in the community today.

“When women in the profession have certainly come a long way since WLFC was formed over 75 years ago, it has been our sense that there is still work to be done to ensure the fair treatment and advancement of women in the profession,” Oliker stated. “Our hope was that the survey would serve as a good starting point to gather concrete data about where women in the legal profession stand today and what work is still left to be done.”

Participants answered over 40 individual questions and provided over one hundred pages of comments, suggesting that women in the legal field still have concerns that warrant significant attention. Notably, over 60 percent of survey respondents stated that they have experienced gender bias in their legal career. Other top issues concerning female lawyers in Franklin County include high stress, work-life balance, time management, billable hours and business generation.

The response rate to the survey was better than anticipated, with over 267 women attorneys in Franklin County participating. The respondents included a diverse cross section of the female legal community, including law firm associates (27 percent), partners (20 percent), solo practitioners (11 percent), government attorneys (10 percent), judges (8 percent) and corporate counsel (8 percent), with a variety of years of practice.

A significant percentage of respondents indicated they resigned or left past employment because of lack of advancement opportunities for women. When asked to elaborate on the reasons for resigning or leaving an employer, many of the respondents stated that there was a negative culture against women. Some provided examples of employers giving some “bad actors” a “pass” on their insensitive comments towards females. Others referenced bosses that only took male lawyers out to lunch as an example of legal employers that still felt like a “boys club.”

More specifically, one respondent claimed, “My work ethic – and probably abilities – was questioned because I was raising kids and working.” For some respondents, they perceived that their employer did not view them as being on par with their male counterparts despite their experience level. Others did not have to read between the lines as they were directly told “a woman cannot be both a mother and an attorney.”

Interestingly, often touted employer programs such as women initiative programs and flexible work policies may not be implemented in a way that furthers the employer’s goals as respondents did not report consistently positive views on these types of efforts. While a majority of employers appear to offer some form of alternative work policy, there seems to be a disconnect between what is available and what is being utilized by female attorneys without jeopardizing some aspect of their careers. This was evidenced by the number of respondents that claimed to have taken advantage of alternative work policies and the conflicting comments regarding the perceptions around utilization of such policies. For example, one respondent highlighted a supervisor’s compliment to a male coworker about his dedication to his work because he worked on his paternity leave. Another respondent even commented that with a specific part-time schedule, there was still the requirement of full-time work even with a “reduced hour” requirement and reduced pay.

Based on the responses to the survey, it appears that only a small percentage of employers have created women’s initiative programs and such programs are being met with some negativity from both men and women. Some of the comments about women’s initiative programs range from women themselves indicating that they are “unclear what they do” or “unsure of the purpose,” to men asking why they do not have a “male-only” equivalent.

Despite these criticisms, 80 percent of the respondents reported that they are somewhat or very satisfied with their career. Many of the respondents discussed the intellectual challenge, ability to problem solve and to help people as highlights of their chosen occupation. Another highlight was the ability to have a flexible schedule indicating, “as long as my work gets done, they don’t mind when I do it;” and “[all lawyers at our office] are responsible for their own schedules,” and “I have a schedule dictated by clients, not my firm.”

When asked how to increase the treatment of women in the profession or female advancement, a common theme emerged from the respondents to increase dialogue, awareness, advocacy and mentoring. Praise was also given to professionally focused women groups like WLFC.

While the full survey results are still being analyzed, one thing is clear: there is certainly still work left to be done and a genuine need for continued improvement in advancing women in the legal profession. According to current WLFC President Katrina Thompson, “For us, the survey process does not end with the collection of data, and a focus for us during the current membership year will be to engage with our members and the legal profession as a whole to figure out what to do with the information we obtained.”

WLFC’s motto is “We are our own best resource” and following that motto, WLFC plans to use the survey results to help highlight and better-tailor future discussion, programming and efforts towards our mission of advancing women in the profession.

Other survey results can be seen at: www.wlfc.ws. Interested in joining WLFC or hosting a gender initiative lunch at your employer? Check out our website.
Rick Pfeiffer:
A Lifetime of Law and Service

BY MARK RUTKUS

He was a soldier in Vietnam, an aide to the longest-serving Speaker of the Ohio House of Representatives, an Ohio State Senator, the first Environmental Judge of the Franklin County Municipal Court and the second longest-serving Columbus City Attorney. When he becomes a private citizen in January, Richard C. Pfeiffer, Jr. will depart public life with a sense of gratitude; gratitude that he was able to participate in government and politics at all levels and in all branches of government, and gratitude that he had the help of many good people along the way.

He calls himself a “Columbus Kid,” whose idea of enjoyment is moseying around the City, checking out initiative, and a longtime board member of the Ohio State Legal Services Association and the Brass Band of Columbus.

Why the interest in politics and government? In the late 1950’s, Pfeiffer was a newspaper carrier for the last year of the Ohio State Journal and the first year of the Citizen Journal. He always read the papers’ articles that dealt with politics and government. His dad subscribed to Time magazine whose political pieces were always part of Rick’s reading interests. Maybe it was in his DNA. His paternal grandfather was a one-term Republican State Senator from Franklin County, while his maternal grandfather was active in Pike County Democratic politics.

Pfeiffer first ran for office in 1980 when he became the Democratic candidate for the Franklin County Prosecuting Attorney. He got in the race to run against incumbent George C. Smith, now a retired Federal Judge. Smith resigned that position shortly after Pfeiffer got his party’s nomination and was replaced by S. Michael Miller. Miller defeated Pfeiffer, 50.3 percent to 49.7 percent. Following that defeat, Pfeiffer was elected three times to the Ohio Senate, two times to the Ohio House of Representatives, an Ohio State Senator, and four times to the position he will leave to the municipal bench and four times to the Ohio Senate, two times to the position he will leave to the municipal bench and four times to the position he will leave.

While Rick will tell you that Columbus has been good to him and his family, he will be leaving his home city to become a resident of Charlotte, North Carolina after retirement.

“THAT’S RIGHT. JANET AND I HAVE TWO DAUGHTERS AND ONE SON. WE FIGURED IT WAS THE DAUGHTER IN CHARLOTTE AND NOT THE SON OR DAUGHTER IN THE BOSTON AREA WHO WOULD LOOK AFTER US BEST AS WE AGE. AND BEHIND THAT, OUR ONE AND ONLY GRANDCHILD IS WITH THAT DAUGHTER AND HER HUSBAND IN CHARLOTTE.”

Work hard, be honest and be collegial with those with whom you work. Those are traits Rick seeks to find in those he has hired in the City Attorney’s office. He also tries to exhibit those traits in his own conduct.

“I SUSPECT MY EGO WILL MISS NOT SEEING MY NAME IN THE PAPER OR MY IMAGE ON THE TV SCREEN,” SAYS PFEIFFER. “BUT I WILL NOT MISS THE PART OF POLITICS I NEVER LIKED OR WAS GOOD AT: ASKING PEOPLE FOR CAMPAIGN CONTRIBUTIONS.”
Of the six schools with the worst employment results locally over the last five years, Capital has experienced a straight line year-over-year decline in its FTPJD employment rate. During that same period, barely four in ten of Capital’s graduates have obtained FTPJD employment within 9 or 10 months of graduation.

Turn Out the Lights
Let’s start with the good news. After years and years in which too many law schools, feasting on guaranteed federal student loan money, continued to produce too many law graduates for too few jobs, it finally appears that some law schools will be closing.1

If law school closures are the good news, the bad news is that none of them are in Ohio, a state with five state-funded law schools, the most in the nation (tied with California). We are, and have been, over-law-schooled in this state and not by a little. Year after year, the numbers tell us that we have at least two or three law schools too many in Ohio. For five years, across all Ohio law schools, barely more than half of Ohio's law graduates have obtained full-time, permanent, JD-required (“FTPJD”) employment within nine or ten months2 of graduation. Worse still, the employment numbers at the six Ohio law schools at the bottom of Ohio’s law school employment spectrum are, and have been, dismal.

Make no mistake, having too many law schools producing too many lawyers is not a benign state of affairs. It has resulted in the admission of applicants with lower credentials3 and who, presumably, are less qualified to practice. It drives down employment opportunities for new lawyers, depresses starting salaries and in doing so, keeps law graduates longer-burdened with heavy debt, debt which causes them to delay important life choices like when, or if, to purchase a home or start a family. Since 2006, median annual lawyer salaries have fallen and relative to other professions median lawyer salaries are losing ground.4

2016 Employment Numbers
The national FTPJD employment rate for the Class of 2016 was 64.5 percent5, an increase of 2.1 percent over the results for the Class of 2015. As they have for the last several years, Ohio’s law schools fell below that national rate. Using the same methodology, the average FTPJD rate for all of Ohio’s law schools for the 2016 Class was 54.8 percent, essentially flat from 2015’s FTPJD rate of 54.5 percent. For the 2016 Ohio class, the total number of FTPJD jobs actually declined from 2015 (9.3 percent fewer FTPJD jobs for 2016 Class than for 2015 Class), although the employment rate ticked up because the Ohio graduating class size was 9.7 percent smaller in 2016 than in 2015. Seven of Ohio’s nine law schools had FTPJD employment rates below the national average.

Not too long ago, an FTPJD employment rate of 55 percent was considered an embarrassment. Now, only three of Ohio’s nine law schools (Ohio State, Cincinnati and Case Western) routinely surpass that bottom-dragging bar while the other six regularly fail to meet it.

<table>
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<tr>
<th>Five Year FTPJD Employment Results for Ohio’s Five State Supported Law Schools</th>
<th>2012</th>
<th>2013</th>
<th>2014</th>
<th>2015</th>
<th>2016</th>
<th>Five Year Average</th>
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<tbody>
<tr>
<td>Toledo</td>
<td>51.7%</td>
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<td>Akron</td>
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<td>Cleveland State</td>
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<td>Columbus</td>
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<tr>
<td>Ohio State</td>
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<td>51.3%</td>
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</tbody>
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*Numbers in red indicate Less than 55% FTPJD Employment 9 or 10 months after graduation

Structure Underemployment in Ohio’s Legal Market
Nothing in the data anticipates better law graduate employment results in the future. Ohio’s Bureau of Labor Management Information projects that between 2014 and 2024, there will only be an average of 406 job openings per year for lawyers in Ohio (111 new jobs and 295 replacement jobs).6 Because under any foreseeable scenario Ohio’s law schools will continue to annually graduate substantially more students than there are jobs available, the Ohio lawyer market will continue to be oversaturated.

What the data makes clear is that we have structural underemployment in the legal market in Ohio. With enhancements to information technology and the outsourcing to non-attorneys of work previously done by attorneys, there are simply fewer billable hours to go around. But there is another, and I suggest, more important cause of structural underemployment in Ohio’s legal market: too many law schools producing too many lawyers for not enough jobs. The annual overproduction of new

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8 Whittier Law School and Indiana Tech law schools have announced they will close and others (e.g., Charleston Law School) appear to be in weak financial condition and may soon have to close as well.

9 We somehow survived their passing.


The data has made clear that a saturated attorney market in Ohio is annually flooded with new lawyers that the legal market here can’t absorb.

For the last decade I have argued that we have too many law schools producing too many lawyers. See: CBLQ Fall 2013, at 27 (“...we have too many law schools in Ohio...”); CBLQ Fall 2015, at 14 (“...there are simply too many lawyers...”); and too many law schools in the United States.” See also CBLQ, Fall 2012, at 4 (“...our state has too many law schools producing too many lawyers...”). CBQ Summer 2013, at 27 (“...we have too many law schools in Ohio...”). CBQ Fall 2013, at 27 (“...the State of Ohio continues to waste millions of public dollars each year by funding the largest number of state supported law schools of any state...”). CBQ Fall 2015, at 14 (“...further downsize is still needed in the form of fewer Ohio law schools...”). CBQ Fall 2016, at 11 (“...we have too many law schools in this state chasing too few students...”).

5f CBLQ, Fall 2012, at 4 ("There are simply too many lawyers..."), which includes the following:... CBLQ Fall 2013, at 27 (“...we have too many law schools in Ohio...”). CBQ Fall 2013, at 27 (“...the State of Ohio continues to waste millions of public dollars each year by funding the largest number of state supported law schools of any state...”). CBQ Fall 2015, at 14 (“...further downsize is still needed in the form of fewer Ohio law schools...”). CBQ Fall 2016, at 11 (“...we have too many law schools in this state chasing too few students...”).


8 See http://books.google.com/books?id=w5UrAAAAYAAJ&pg=PA22&lpg=PA22

Better Lawyers recently sat down with Emily Dunlap, Staff Attorney for Columbus-based Advocating Opportunity, to discuss her position as the second Grief Fellow in Juvenile Human Trafficking and how she ended up in this unique area of public service.

For those who are unaware, what is Advocating Opportunity and what do you do in your current role?

Advocating Opportunity is an amazing nonprofit organization. If you have ever done any work in the anti-trafficking field in Ohio, you know the name Megan Mattimore. Megan founded Advocating Opportunity five years ago in Toledo, and has been doing groundbreaking work ever since.

Advocating Opportunity provides “whole-person advocacy” to survivors of human trafficking. We created an integrated legal services and advocacy-based model where survivors have access to attorneys and social services advocates within the same organization. This integrated approach guarantees we have access to attorneys and social services advocates within the same organization. This integrated approach guarantees we have access to attorneys and social services advocates within the same organization.

I think it’s safe to say that you did not follow a “traditional” career path for recent law school graduates. What made you interested in pursuing a career outside of a firm or the local government?

I have always been driven to use my time and talents for a greater good. While an undergraduate at Ohio University, I helped plan Take Back The Night marches and other local social justice and awareness campaigns. After finishing my undergraduate degrees, I moved to Florida and joined AmeriCorps. I spent a year working to address and lower the local unexplained teenage pregnancy rate through education initiatives and local organizing. Ultimately, I found my niche while I was at The Ohio State University Moritz College of Law and worked hard to pursue law through the lens of social justice and change.

My time in law school involved a strong focus on access to justice. I was part of the Public Interest Law Foundation Board and the attorney-owner, inspired a strong interest in and passion for immigration law. I found joy and satisfaction in the law by working directly with people, working with them through times of struggle. Finding that level of fulfillment became a motivating factor in deciding my career path.

What are some of the positive impacts that you have seen from serving those in need of legal services?

Some of the strongest, most positive experiences in this job happen when I meet with a client to complete intake. There is no relief like the joy that comes when we’re able to help a survivor get the legal services they need. I have clients, for example, who I have been communicating with for years. They have completed high school, obtained legal representation, and are moving on with their lives. It’s incredibly rewarding to see clients achieve success and independence. It’s a privilege to be able to help clients in such a meaningful way.

Advocating Opportunity provides “whole-person advocacy” to survivors of human trafficking.
A Primer on Trending FMLA Issues

BY PETER FRIEDMANN

The Family and Medical Leave Act of 1993 (FMLA) requires covered employers to provide employees with up to twelve weeks per year of job-protected leave for qualified medical and family reasons. The leave may be taken all at once, or intermittently, as the medical condition requires.

Private employers with at least 50 employees within 75 miles of the worksite are covered by the FMLA. Government agencies (including local, state and federal employers) are covered by the FMLA regardless of the number of employees. As long as the employee has worked for the employer for at least 12 months, and has worked at least 1,250 hours in those 12 months, the employee will be eligible to use FMLA leave.

Compliance with the FMLA can be very convoluted, which in turn exposes employers to a significant risk of liability for noncompliance. Some of the most common issues employers face with FMLA compliance include (1) Not providing proper training to supervisors and management; (2) Failing to notify eligible employees of their FMLA rights; (3) Denying coverage to eligible employees; (4) Using FMLA leave as a negative employment factor; (5) Counting FMLA leave as an absence; (6) Requiring an employee to perform work while on FMLA leave; (7) Failing to reinstate an employee to the same or similar position.

Most FMLA violations occur because an employer’s management and supervisors have not received proper training on FMLA law. Management is typically on the front line of receiving notice or request that an employee needs coverage to eligible employees; (4) Using FMLA leave as a negative employment factor; (5) Counting FMLA leave as an absence against the employee.

It is unlawful for an employer to require an employee to work while on FMLA leave. One theory behind the 50-employee minimum to cover employers under the FMLA is that the employer’s business should have enough employees so that FMLA leave will not disrupt the operations. As such, if the employer requires the employee to perform work while on FMLA leave, and also counts that as time against the employee, the employer can be found to have interfered with the employee’s rights under the law.

Finally, one of the most common mistakes employers make that results in violation of the FMLA is the failure to reinstate the employee to a same or equivalent position after returning from leave. Changes to work location, schedule, job responsibilities and opportunities for advancement can be considered retaliation. Because the FMLA involves a serious medical condition, the Americans with Disabilities Act (ADA) may apply as well. The Equal Employment Opportunity Commission has recently been taking a stance that additional leave after the permitted 12 weeks of FMLA may be considered a reasonable accommodation for the employee.

In Lankford v. Reladyne, LLC, the employer (Reladyne) terminated the employee (Lankford) immediately upon return from FMLA leave for alcohol rehabilitation1. Alcoholism is considered a disability under the ADA, and Lankford’s leave for treatment was permitted by the FMLA. Just days after Lankford left for FMLA leave, Reladyne initiated an investigation into alleged misconduct by Lankford. However, the upper-level management of Reladyne had circulated emails as to how “unreliable” Mr. Lankford had now become, and that Reladyne had to be “proactive” in addressing his issues. Most importantly, in the termination meeting, Lankford’s manager wrote on the termination paperwork that Lankford was not eligible for rehire because his “life is in ruins, needs outside help.” The manager admitted that his comments were referring to Lankford’s alcoholism. A jury found in favor of Lankford, concluding that Reladyne had interfered with his FMLA rights by not reinstating him, and that Reladyne had retaliated against Lankford for using FMLA leave. Lankford was awarded lost wages, liquidated damages, costs and attorneys’ fees.

Maximize Your Billable Hour

BY EIMEAR BAHNSON

A recent national study found that the average solo and small firm practitioner spends 40 percent of his/her time on non-billable work. Couple that with the ability to collect less than 30 percent of those billable hours, and it’s easy to understand why attorneys are struggling to balance it all. As a Board member, I frequently hear from Columbus Bar members looking for ways to cut costs and increase productivity, all while continuing to provide exceptional client service — aren’t we all.

Repetitive document creation and form completion is one of the most significant barriers to efficient case management and increased costs to clients. That’s why the CBA launched Central Ohio Docs — to save members time and money. This new member benefit is designed to reduce, or even eliminate, the time and expense associated with repetitive document creation and assembly.

Central Ohio Docs applies HotDocs® powerful document assembly technology to enable Columbus Bar members to quickly and easily generate multiple forms by answering a series of automated questions relevant to the legal matter involved. The answers are applied to various technological algorithms (much beyond my comprehension) to produce accurate and customized documents, in a format the court expects.

The forms were created by subject matter experts who practice in central Ohio and are specifically tailored to comply with rules and procedures of local courts, including courts in Franklin County, Ohio. All forms will be updated as necessary to reflect changes in the law or local court rules.

Lisa Pierce Reisz, President of the Columbus Bar Association noted, “Making Central Ohio Docs is a part of the CBA’s continued commitment to offering our members access to the latest technologies, aimed at improving practice management, generating workflow efficiencies and delivering value for their clients.”

Central Ohio Docs addresses some of the common limitations of fillable pdf forms — all of the information is typed in once and saved in the user’s HotDocs® account. Each document can be re-opened, modified and printed as a new document — all without having to retype the entire document or making the same revisions to multiple documents. Central Ohio Docs also eliminates many of the routine tasks required in ordinary word processing, such as cutting, pasting and reformatting, providing a more accurate finished product. Once completed, the documents are produced with all blanks filled in, and all pronouns and verbs in the correct place grammatically and numbered in a fraction of the time it would take using a word processor or fillable PDF.

“The HotDocs technology is so sophisticated, but so easy to use. These customizable legal documents can be edited and accessed anytime, anywhere, on any web-enabled device,” Jonathan Hoy, VP of HotDocs Market, noted. “A subscription to Central Ohio Docs gives CBA members unlimited use of every template offered in the product. Even if the product is used for just one client, it saves the attorney enough time to effectively cover the subscription fee.”

Central Ohio Docs is very cost effective and offers CBA members both a monthly and annual service fee. The monthly cost is $20 per practice area, or $199 annually.

As a family law attorney, I’m thrilled that Domestic Relations was the first subject matter to be developed with the Central Ohio Docs service. The Domestic Relations library contains 35 different forms and pleadings that are used most often in divorce and dissolution matters, including required affidavits and notices.

I recently had the opportunity to sit in on a demonstration of the domestic relations forms to the Franklin County Domestic Relations Court Magistrates who provided enthusiastic and positive feedback. The Columbus Bar Association Family Law Committee also reviewed the forms and gave positive feedback from practitioners who routinely practice in the Franklin County Domestic Relations Court.

All of the documents currently available in the Central Ohio Docs library are listed on the CBA website at cbalaw.org/CentralOhioDocs.

The CBA is currently working with real estate professionals to develop a real estate document library and additional practice areas, including estate planning and juvenile law.

If you’d like to learn more about how document automation can help you maximize your billable hour, the CBA is hosting a free CLE on October 18, which will include samples using the Hot Docs technology.

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Mediation is the prime opportunity for parties to achieve prudent, business-minded outcomes and avoid the expensive uncertainties of litigation. To be successful, however, advocates must approach mediation with the same diligence and determination with which they approach trial.

Preparation for mediation isn’t limited only to lawyers. The parties should actively participate in mediation prep so they can then actively participate in the negotiations. The lawyer-client preparation should involve an analysis of what happens should mediation fail. The most obvious and likely outcome if mediation fails is a litigated case. I’m often surprised when lawyers show up at mediation without having done the math of what it will cost to take a case through trial. In litigation for monetary damages, the parties must undertake a two-part analysis. First, the parties must determine what it will cost to take the case through trial from the date of mediation. Money expended prior to mediation is a sunk cost and should be checked at the door. The cost analysis must be inclusive of all fees, like attorneys, experts, jury consultants, etc. and costs, like court reporters, deposition transcripts, courtroom technology, witness fees, travel, etc. Second, the parties must evaluate the likelihood of what could happen at trial in terms of damages. What is the best or worst day at court and what is the likelihood that outcome will occur? Calculating these numbers will help the parties appreciate their best or worst outcomes if the mediation is a bust.

In mediation, I commonly question the parties about these costs only to learn that this basic analysis has not been conducted. Without these parameters, it is difficult, if not impossible, for a party to understand if the amount offered in mediation makes good business sense or not. This is important homework that should be conducted prior to mediation – failure to do so will frustrate both the mediator and the opposing party.

Futhermore, the mediation statement is a party’s first opportunity to educate the mediator on the key facts and law of the case. Caution: this is not an occasion to cut and paste a summary judgment motion. Mediators do not want or need the complex legal and factual minutiae of your case. Instead, they want to understand how the case has evolved and where impasse remains. For example, if the issue of liability isn’t being meaningfully contested then focus the brief on damages.

A strong mediation statement will address both strengths and weaknesses and how each might play out at trial. This is also an opportunity to acknowledge when one side has made a mistake. Owning a mistake and even expressing remorse for it will earn a party credibility points with both the mediator and the other side. If there is little dispute that an employer inadvertently miscalculated FMLA days, then the employer should acknowledge this mistake in its position papers. While it is important to prepare for a mediation like it is a trial, it is equally important not to go on the offensive like one would in trial. One of the absolute keys to success in mediation is to be, or at least appear to be, reasonable. Your mediation paper is the first opportunity to send the message of rational, reasonable thinking.

If you are fortunate enough to have a smoking gun document, attach it to your mediation statement. I do not recommend springing a hot document on either the mediator or opposing party during the mediation. Equally important, mediation is not the occasion to hold back key documents in an effort to keep one’s powder dry. If a party is genuinely committed to settlement, it should disclose the best documents in support of its case so the opposing side and the mediator can effectively evaluate the claims.

I also recommend that you expressly state in the mediation statement that you and your client are genuinely committed to settling the case. It seems obvious, but this simple expression of good faith is sometimes overlooked and omitted. It absolutely should be included in the closing paragraph of any mediation statement that will be exchanged with the other side.

Finally, and possibly the most important best practice to put into action, exchange mediation papers with the other side. The path to settlement should not be obstructed by partial disclosures. Persuasively make your very best case and tackle your weaknesses. Shielding your position and withholding documents breeds an environment of mistrust and suspicion. If there are issues you would like to bring to the mediator’s attention confidentially, that is certainly permissible. But do so outside the mediation statement.

The next opportunity to advance along the road to settlement is with the opening statement in joint session.

I only recommend opening statements where both the parties and lawyers can agree not to squander this opportunity with chest-thumping declarations lauding their case. Mediators are not impressed with 30-minute power point presentations highlighting only the very best aspects of a case. In fact, I would caution lawyers to stay away from power points altogether in mediation.

So what should an opening statement sound like? Remarks should be respectful and polite. Opening statements are much more effective when delivered at least in part by the parties rather than the attorneys.

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Going for 20

By Greg Kirstein

March 2, 1998. The limo unexpectedly pulled into my driveway, courtesy of my brother. The kids, 12, 10 and wide-eyed, watched in amazement as Dad, all shined up for day one of work at the NHL’s newest franchise, rode off to the Columbus Blue Jackets.

Fast forward to April 16, 2017. Despite badly outshooting the defending Stanley Cup champion Pittsburgh Penguins in Games 1 and 2 of the 2017 NHL Playoffs, the Jackets return home down two games to none in the best-of-seven series.

And then it happens: just like the 2014 series vs. the same Penguins, Columbus sports fans — many who have been to the Super Bowl, the World Series or the College Football Playoff – report en masse that they have never, ever heard anything as loud and as intense as Game 3 at Nationwide Arena.

That is why every one of us who works for the hockey club shows up every day: to do everything possible to bring a Stanley Cup to Columbus and cement our city, once and for all, as major league.

March 2, 2018 will mark 20 years since I became the team’s Senior Vice President and General Counsel. It’s been a privilege, a roller coaster ride and a book whose last chapters are still unwritten.

Our Legal Department is just a cog in a much bigger wheel. After nearly 20 years, I can report that the immigration work for Russian prospects grows more difficult given the relationship between our two countries. More embassies, more consulates, more documents. The NHL, much like the NFL, finds itself in class action concussion litigation brought by retired hockey players. Media rights negotiations are wildly more sophisticated, as value is now judged by all things digital, and people get paid to record the number of tweets, Facebook and Instagram posts, and re-tweets.

Three other notable, positive things have occurred since I wrote a similar column in 2008. First, the switch to the NHL’s Eastern Conference, which means that all 14 conference rivals play in the Eastern time zone.

Previously, 13 of our 14 conference opponents were from times zones to the west; imagine the difference in TV ratings! Second, the combined booking agreement between Nationwide Arena and the Schottenstein Center, which has allowed Columbus to offer every “A-list” concert under the sun. And lastly, moving the Club’s top minor league team to Cleveland, which has exposed countless Northeast Ohio hockey and sports fans to the Jackets.

What lies ahead? We think sustained success. For the non-fan, Columbus’ expectations when the team took the ice in 2000 were unrealistic. The players available to the expansion Jackets and Minnesota Wild were those cast adrift after previous expansion drafts for Nashville (1998) and Atlanta (now Winnipeg, 1999). Whatever modest talent was available was then split between the Jackets and the Wild. Similar to starting a law firm with other firms’ cast-off lawyers.

Why such optimism? It took 9 years (2000-09) to first make the NHL Playoffs. But it only took five the second time in 2014. And then it only took three years to 2017. And while last spring’s Stanley Cup Playoffs showed the world just how good the Penguins were, you could sense in our office, in the locker room and with the media that everyone understood the Jackets were close to having a perennially-performing team.

The goals haven’t changed since that limo ride in 1998: to provide Columbus world-class entertainment, to give back continuously to the community and to make our fans proud. The Jackets, due to unbelievable commitments by the McConnell family and Nationwide Realty Investors, and hard, hard work by our staff, now belong in the Ohio pro sports conversation at the Reds, Indians, Cavs, Bengals and Browns’ level.

It’s just easier to say that now.
Lumbering along with an eerie intensity, driven to a specific end and yet appearing aimless at the same time. Seemingly down for the count, only to rise back up, maimed and ever diminished, to carry on the endless slog; lurching, ever lurching toward final satiation. It is the season of ghoulishness, but it is not zombies of which I write, but rather the legislative life of some bills in the Ohio General Assembly.

I especially enjoy this time of year and our celebration of the macabre and spooky, mixing in mischief with sweet treats. It makes me ponder, though, the death of certain Ohio House and Senate bills, only for them to rise again and again in subsequent legislative sessions, much like the living dead of current pop culture obsession. Though our zombie bills have their undead status in common, they address a wide variety of issues and meet their perpetual deaths for different reasons. Some encompass controversial issues that deeply divide the public as well as our legislators. Some are pet projects with only a small number of supporters while others are not able to garner enough attention in a packed legislative session.

My professional experience focuses on one such zombie bill, last named Senate Bill 295, but also known as H.B. 383 and S.B. 168; who in life was a fresh faced ingénue masquerading as a municipal law director who wished to have the same authority to issue misdemeanor investigative subpoenas that her county prosecutor sister possessed for felony investigations. The ingénue died a slow death in the 128th General Assembly, only to rise again and again in subsequent years; missing a hand, then a foot and in her current state, short an eye, but nevertheless shambling onward in the current 132nd General Assembly. As an Assistant City Prosecutor, I anxiously anticipate each new legislative year and concomitant reanimation, ready to cheer her on again, ever hopeful that this time we’ll get to the finish line and with enough body parts left to still be useful.

S.B. 295 is not alone in her journey – zombies like to move around in herds, you know. H.B. 228, the latest incarnation of Stand Your Ground legislation, has made its acquaintance with the grim reaper repeatedly since 2005. Bucking the usual rules of the undead, though, H.B. 228 is stronger after its most recent bout with brinkmanship, emerging in the current session with an additional “appendage” that would upend decades of self-defense law in Ohio and require the prosecution to disprove self-defense at a trial. I worry for this particular specter, though, and predict that its finish line lies far beyond the point at which it can keep shuffling along.

H.B. 53, legislation that would make Ohio a “right to work” state has the ignoble distinction of meeting death not only at the hands of the General Assembly multiple times, but also at the hands of Ohio voters at the ballot box. Recall S.B. 5, a proposed constitutional amendment to scale back public unions that failed resoundingly in 2011. Refusing to shuffle off this mortal coil, H.B. 53 now re-joins its zombie brethren in the Ohio House; might it finally cross-over and shed its zombie skin?

No one can fault the tenacity of the undead. Perhaps inspiring their continued press (if indeed a zombie can be inspired), is H.B. 359, Ohio’s Address Confidentiality Law, which allows domestic violence, stalking and sexual assault victims to obtain a confidential identifier number to be used for all government records in Ohio and was finally signed into law this past summer. The sixth resurrection was the charm for H.B. 359, having first been introduced in 2010. With this ghoul history in mind, when you open your door to trick or treaters this season and pass out candy to a steady stream of witches, ghosts, goblins and ghouls, be on the lookout for possibly the scariest costume of all – a legislative bill.

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Many people will recall the win by the computer Deep Blue over world chess champion Garry Kasparov in 1996. However, humans were still occasionally able to defeat computers in chess competition as late as November 2005, when Russian Kasimdzhanov defeated the computer program known as Fritz. It’s not happened since. Competitions are no longer even scheduled between top computers and humans.

Earlier this year, Google’s computer program “AlphaGo” defeated the world’s best player in what the New York Times called “humankind’s most complicated board game,” Go. The game is so complex, the Times noted, that “even supercomputers cannot simply calculate all possible moves.” The computer’s prowess in recent years caused top Go players to challenge basic assumptions made about a game that has thousands of years of tradition. But, as in chess, the computer now reigns supreme over yet another human endeavor involving the mind.

In the legal profession, computer programs have enabled one lawyer to accomplish in legal research what it took ten or more attorneys to do just twenty years ago. Furthermore, all written judicial decisions are being reported now, even at the Common Pleas level. One result of this is that there are different kinds of artificial intelligence. For this article, I will use the terms “Weak AI” and “Strong AI.” Strong AI possesses the entire range of human cognitive ability, including self-awareness, sentence and consciousness. Weak AI has none of these qualities. Weak AI is incredibly fast (the fastest computers are now beyond performing quadrillion computations per second), but they remain ultimately unaware, in that the computer must follow the software program’s instructions. In other words, the computer must literally be told what to do.

When I was an active trial judge, I certainly wished, on occasion, that I had more information or more time to dig into relevant cases from multiple jurisdictions. But with so many cases in the system, one cannot spend weeks on one case to the exclusion of the hundreds of other active cases on the docket. It is with that thought in mind that I consider whether AI will ultimately replace human judges. Consider that a robotic judge will have literally millions of cases to instantaneously sift through before reaching a decision. Consider, too, that a robotic judge will not be subject to emotion, whether it’s because of the facts of the case, “what the judge had for breakfast that day,” the personalities of the attorneys or anything else. Indeed, another question is whether the attorneys themselves will be replaced by AI “attorneys.” [Jurors—and intermediate appellate courts—would be superfluous], Witnesses will still be human, but AI will be able to quickly determine and undermine their credibility by having access to so much of their past. Since privacy will be almost non-existent by then (look at the direction we’re going in now), almost everything will be knowable, from misstatements on loan applications, to medical reports that state the person’s ability to see/hear/remember things, to every Tweet, email, instant message and so on, written by the witness. Since these things will be instantly available to the RoboJudge, algorithms (yet to be developed) would arguably make decisions fairer and more exact.

Stephen Hawking and many others have written of the extreme dangers and great benefits of AI, and some experts, like Ray Kurzweil, believe AI will match and exceed human intelligence by 2029. Others well known in the AI community posit decades or even centuries before this would occur.

But what, exactly, does that mean? “Siri” already knows more than I do: she can tell me the best route to Milwaukee and change recommendations based on traffic congestion. She can name the last thirty singles winners at Wimbledon and tell me who won the Nobel Prize for Literature in 2004. And that’s incredibly “easy” for Siri.

Can “Siri” tell me whether to send a particular defendant to prison? Why not? Siri can—given the right program—give me an incredible amount of information about a person. In fact, who needs a human judge? “Siri” could weigh the information based on a myriad of factors, and decide what the correct sentence should be.

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Continued on page 28
But let's take this a step further. Can “Siri” tell me whether to send a particular defendant to prison? Why not? Siri can – given the right program – give me an incredible amount of information about a person. In fact, who needs a human judge? “Siri” could weigh the information based on a myriad of factors, and decide what the correct sentence should be. I might add that “Siri” could serve equally well in the Legislature, and come up with proper sentences and sentencing procedures.

Is this our legal future, then, to have RoboJudges decide the civil and criminal cases that are on the docket? Again, couldn’t “Siri” serve equally well as the prosecutor—to indict or not—and the police, and so on?

I am going to respectfully submit that the answer is “No.” Clearly, what follows is not just my opinion. Neuroscientists tell us that a computer (robot, etc.) does not have consciousness. It cannot hope, strive or suffer, cannot get old, cannot have acne or balding issues, cannot get cancer, pregnant or jealous, and (given a steady power source and replaceable parts), cannot die. Therefore, it has no consciousness, and remains in the realm of “Weak AI.” That means that while computers remain in the realm of being able to process information faster than most of us can imagine, it cannot truly contemplate. And by “contemplate,” I also include the ability to be stubborn, pigheaded and just plain “wrong.”

The jump from Weak AI to Strong AI is truly a quantum leap. We are nowhere near achieving it. We do not even have any idea how to begin achieving it. It’s not adding more processors or combining supercomputers; it is a totally different task, or series of tasks. Perhaps if I put it this way: we cannot quantify what a “thought” is. We cannot see it, weigh it, measure it or transfer it to another (without speaking or writing it, of course). As far as we know, it has no mass. And yet, we think. How? And if we can’t understand, much less explain that, how can we transfer such a thing to a computer?

To conclude, I see weak AI being of tremendous service to making tasks easier and less expensive to perform in an incredible array of human endeavors. This is causing and will continue to cause ever increasing societal issues (e.g. employment). But weak AI operates under the direction of the human(s) who control it. That may well end up being the death of us all (which is what I believe Hawking, et al. rightly fear), but should that occur, our death will come from the human element: the greed, fear, stupidity and anger that we possess, not from the computers themselves.
Few crimes are more frightening than sexual assault. The pain that victims of sexual assault endure doesn’t diminish with the passage of time, and that pain is often compounded if their attackers are never caught or even identified. Victims of sexual assault deserve the chance to heal and to have confidence that the perpetrators will face justice.

DNA evidence has become a powerful tool used to convict those who commit crimes, especially sexual assault. As the national DNA database has expanded, so have the opportunities for law enforcement and prosecutors to pursue sexual assault cases.

Not long after I became Ohio’s Attorney General in 2011, I learned that thousands of sexual assault kits that had never been submitted for DNA testing — some crimes going back decades — were still on the evidence shelves of law enforcement agencies around the state. The longer this evidence remained unanalyzed, the longer sex offenders were at large and free to potentially harm more victims.

We worked with victims’ rights advocates, law enforcement, forensic scientists and prosecutors to determine what to do and adopted a fairly simple policy: if a crime was committed, the kit should be submitted. Whether the case is prosecuted is a decision made later in the process, but testing ensures that DNA from sex offenders will be uploaded into the state and federal database where DNA profiles can be stored and searched.

Despite the increased workload, we made sure the influx of older kits didn’t slow the testing of kits associated with more recent crimes. By hiring ten additional forensic scientists, the kits submitted under the Ohio Attorney General’s Sexual Assault Kit (SAK) Testing Initiative are being analyzed as quickly as possible.

As a result, our SAK Testing Initiative is helping take sexual predators who may have thought they had long ago gotten away with their crimes off the streets.

In Cuyahoga County — a substantial source of the untested sexual assault kits — more than 600 defendants have been indicted so far.

Ohio Senate Bill 316, which was crafted as a result of our SAK Testing Initiative, became effective in March 2015. SB 316 required Ohio law enforcement agencies to submit any remaining previously untested sexual assault kits associated with a past crime to a crime laboratory by March 23, 2016. Of the 13,931 kits submitted to BCI, 4,601 were submitted after SB 316 went into effect.

In addition to bringing criminals to justice and preventing sexual predators from victimizing additional citizens, research conducted at Case Western Reserve University revealed that our SAK Testing Initiative saves communities’ money over time.

Researchers at Case Western’s Begun Center for Violence Prevention Research and Education reported that every conviction resulting from the SAK Testing Initiative amounts to a savings of $40,866 to the community. Based on a conservative 25 percent chance of recidivism, the researchers estimate that for every four rape convictions, at least one rape is prevented; indicted sexual offenders represent as many as a third of the SAK cases.

The researchers’ calculations were based on tangible costs such as medical expenses, lost workdays and out-of-pocket expenses, as well as intangible costs like pain and suffering, decreased quality of life, and psychological distress. The estimates were based on Cuyahoga County numbers but could be representative of the state.

Our SAK Testing Initiative is delivering results: we’re taking steps to make those results even more meaningful through a joint project with Bowling Green State University (BGSU). With funding from the Laura and John Arnold Foundation, the University and the Ohio Attorney General’s Center for the Future of Forensic Science are conducting a joint research project, which will use data mining to develop the most efficient testing process. While BCI currently analyzes everything contained in the kits, the information derived from this project may help shape the sequence in which the pieces are tested and could generate cost savings resulting from greater efficiency.

While our SAK Testing Initiative has helped bring sexual predators to justice and enabled their victims to begin the healing process, we have not ignored the needs of sexual assault survivors for comprehensive support.

In 2013, my office conducted a statewide survey and found that only 36 counties offered core services for sexual assault survivors and eight had few or no services. That year I established the Sexual Assault Services Expansion Program, and since then we’ve awarded millions in grant funds as part of this initiative to ensure that victims throughout the state have access to the comprehensive services that they deserve. Today, 80 counties report that they provide all core services, and all 88 counties are expected to have core services by 2018.

Our SAK Testing Initiative is helping identify offenders whose crimes will be investigated and, hopefully, prosecuted. We’re collaborating with academic scientists to improve and streamline the analytic process. And we’re working with crime victim advocates around the state to ensure survivors of sexual assault have access to a full range of essential services in or near their home communities.

Victims of sexual assault in Ohio deserve no less.
Legislating Gun Bills: Lots of Storytelling, Little Data

BY JEFFREY EYERMAN AND JACK D’AURORA

The Ohio General Assembly seems to be enamored with guns. And laws designed to get them into more people’s hands. At least six pending bills seek to expand the rights of gun owners in general, and concealed carry holders in particular. The proposals range from the practical (H.B. 152 proposes a “firearm restriction” be added to the hunting licenses of convicted felons) to the questionable (H.B. 201 would allow anyone to carry a concealed weapon without a permit and eliminate the obligation to tell the police you’re carrying). The Ohio General Assembly seems to be proceeding on the premise that more guns in hands of citizens is a good thing, and laws designed to get them into more people’s hands. At least six pending bills seek to expand the rights of gun owners in general, and concealed carry holders in particular. The proposals range from the practical (H.B. 152 proposes a “firearm restriction” be added to the hunting licenses of convicted felons) to the questionable (H.B. 201 would allow anyone to carry a concealed weapon without a permit and eliminate the obligation to tell the police you’re carrying).

The General Assembly seems to be proceeding on the premise that more guns in hands of citizens is a good thing, but the data — notably lacking in the hearings for these bills — suggests otherwise. Unlike courts which require hard evidence, lawmakers propose legislation based on what makes a good story. Here are a few examples:

H.B. 233 would allow all concealed carry holders or, if permitting requirements disappear, anyone to carry their guns into schools, courthouses and daycares, so long as they leave when requested. In introducing the bill, Rep. John Becker (R-Clermont), has referred to concealed carry holders as the “cream of the crop of the citizenry,” noting that concealed carry holders “are required to pass a background check, be fingerprinted, photographed and trained in gun safety and marksmanship.” It’s unclear how these requirements elevate one’s status. After all, folks who get arrested are fingerprinted, background checked and photographed, and some probably underwent gun training.

Mr. Becker seems to have resolved this dissonance with what he amusingly calls the “jerk clause.” That is, “if [when asked to leave], you choose to be a jerk about it and refuse to leave, you are then subject to the charge of disorderly conduct.” Why give anyone the opportunity to be a jerk about it in the first place? The reasoning isn’t clear, nor is the benefit that society gains from more concealed guns in more public places.

Some lawmakers seemingly want to make it easier for people to use their guns. Rep. Sarah M. LaTourette (R-Chesterland), has co-sponsored H.B. 228, which shifts the burden of proof in criminal prosecutions involving claims of self-defense. A type of “stand-your-ground” law, the proposed bill would require prosecutors, in cases where an accused shooter claims self-defense, to prove beyond a reasonable doubt that the shooter was not acting in self-defense.

To LaTourette’s mind, the law would ensure that “law-abiding citizens in our state don’t have to try to decide if they will be able to defend themselves in court before they decide to defend their family in a life and death situation.” LaTourette doesn’t tell us how often this situation arises, though it certainly occurs — recall that a judge in Jefferson County was recently attacked and defended himself by returning fire. As we’ll discuss later on, those instances when citizens actually use a gun in self-defense may be rarer than you think.

Rep. Nino Vitale (R-Urbana) is sponsoring H.B. 310, a bill that would let elected officials carry guns into their places of business. It’s a sensible enough policy on its face, but Vitale’s rhetoric is a bit unsettling. As he sees it, “if someone knows someone can defend themselves, they might keep their rhetoric at an acceptable level.” Does this mean, people who protest against public officials might need to stay quiet or risk being shot by their representatives?

What does the data say about right to carry (RTC) laws and their effect on crime? Little, until recently. A 2004 report from the National Academies National Research Council concluded “it is not possible to reach any scientifically supported conclusion. … The evidence to date does not adequately indicate either the sign or magnitude of a causal link between the passage of right-to-carry laws and crime rates. Furthermore, this uncertainty is not likely to be resolved with the existing data and methods.”

Since then, Stanford Law Professor John Donohue has concluded, using a new statistical technique, that on average, RTC states have violent crime rates that were seven percent higher five years after RTC law passage than non-RTC states during the same five years. After 10 years, the gap increased to almost 15 percent. “There is not even the slightest hint in the data that RTC laws reduce overall violent crime,” Donohue stated.

Donohue makes an interesting analogy concerning widespread gun ownership: “If we gave 300 million people a brain scan, we would save a certain number of lives, but you wouldn’t want to advocate that treatment without considering how many lives would be lost by exposing so many to radiation damage. One needs to consider both the costs and benefits of any treatment or policy.”

What costs come with gun proliferation? The data suggests that more guns in a home increase the likelihood of those guns being used to murder family members.

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What costs come with gun proliferation? The data suggests that more guns in a home increase the likelihood of those guns being used to murder family members.
Increased gun availability also increases the risk of gun suicide. The Centers for Disease Control reported 21,334 gun suicides in 2014.1 Researchers have found that “victims of suicide living in homes with guns were more than 30 times more likely to have died from a firearm-related suicide than from one committed with a different method.” Why? Because guns require little preparation—an important attribute, “particularly when the impulse is impulsive.”2

And how often are guns used in self-defense? While advocates have claimed that 2.5 million Americans use guns in self-defense each year, Harvard’s David Hemenway has concluded this number is way off, based on faulty data. Survey respondents claim to use guns in self-defense each year, Harvard’s David Hemenway has concluded this number is way off, based on faulty data. Survey respondents claim to have shot more than 200,000 criminals, but only about 100,000 people are treated in emergency rooms for gunshot wounds annually—including criminals, who “almost all go to hospital emergency rooms for treatment of their wounds.”3

If law-abiding gun owners fatally shot 200,000 criminals annually, they would be doing away with 3,846 bad hombres per week. Yet, FBI statistics for 1993 show only 350 justifiable homicides by citizens in the United States per week. Dr. Jeffrey Eyerman, Esq., said passage of laws restricting gun ownership “increased the risk of violence in the home, that ‘victims of suicide living in homes with guns were more than 30 times more likely to have died from a firearm-related suicide than from one committed with a different method.’” Hemenway concluded that “victims of suicide living in homes with guns were more than 30 times more likely to have died from a firearm-related suicide than from one committed with a different method.”

But legislators eager to ease concealed carry restrictions and make it harder for police and prosecutors to do their jobs could learn something from the courts: rely on facts instead of storytelling when passing bills. We’d probably all be safer in the long run if they did.

3 “Firearms and violence, a critical review,” Committee to Improve Research Information and Data on Firearms, Charles P. Welldon, John V. Pepper, and Carol V. Petrie, editors, National Research Council of the National Academies, executive summary at p. 1.
4 http://news.stanford.edu/2017/06/21/violent-crime-increases-right-carry-states/
6 King County, Tenn., was largely white and enjoyed a relatively high standard of living. Shelby County, Wash, and Cuyahoga County, Ohio, were 44 and 25 percent black, respectively. Fifteen percent of Shelby County household families lived below the poverty level. Eleven percent of Cuyahoga County’s household families lived below the poverty level. The homicides in King and Shelby counties occurred over a five-year period. The homicides in Cuyahoga County occurred during a two- and a five-year period.
7 https://www.cdc.gov/nchs/fastats/suicide.htm
8 http://news.stanford.edu/2017/06/21/violent-crime-increases-right-carry-states/
The Right of the People: The Second Amendment and its Jurisprudence

By Derek DeBrosse

“All nowhere else in the Constitution does a ‘right’ attributed to ‘the people’ refer to anything other than an individual right.” For many years prior to 2008, a common notion that existed in the legal world was that the Second Amendment to the United States Constitution only applied in the context of an armed militia. It was not until the landmark case cited above that that proposition was dispensed with thus holding the Second Amendment is an individual right.

We now live in a post Heller world, one in which the jurisprudence surrounding the Second Amendment is fertile territory to be developed. Since Heller, we have seen additional case law developed to include the incorporation of the Second Amendment to the states. But what does this mean and where is it going?

Gun control in this country started with the National Firearms Act of 1934 in response to the gang warfare that was occurring in our Country’s history at that time. The regulations stemming from this law began to control possession and transfer of the firearms used in crimes such as the St. Valentine’s Day Massacre. From there, gun control legislation almost routinely was introduced, if not passed, in response to some form of tragedy. For instance, the Gun Control Act of 1968 was passed after the assassinations of JFK, RFK and MLK. As Congress routinely began addressing the issue of violence with regulations on our right to possess firearms, it became increasingly clear that the body of jurisprudence surrounding this matter was lacking. Heller came about in 2008 and for the first time settled the issue as to what the Second Amendment was and to whom it applied. This was a victory for the civil libertarians. Heller thus laid the groundwork for Constitutional analysis to apply to the multitude of gun laws we have become accustomed to in this Country.

Since 2008, there have been an array of issues at the forefront of this legal debate. From what weapons are protected by the Second Amendment to the mode of carry protected, it seems as though challenges are becoming routine. The one issue that the Supreme Court deferred in Heller, which it must eventually address, is the standard of review that should apply to the Second Amendment. Heller clearly established that the Rational Basis standard should not apply, but left the matter open. Many circuits have applied the Intermediate Scrutiny standard including the 5th Circuit. It should be noted, however, that the 6th Circuit originally applied Strict Scrutiny and it was not until the matter was heard en banc that Intermediate scrutiny was established. Once established, it will be interesting to see how the various courts applying the appropriate level of scrutiny decide challenges.

It is important to understand that whether or not we enjoy firearms, hunting or the like, they are part of not only our culture, but also our civil liberties. It is often said the Second Amendment exists for hunting. This is patently false. Heller clearly established that part of the core right is, in fact, for defense of hearth and home. Additionally, the common thought in our country that “assault weapons” and handguns must be outlawed shows not only a misunderstanding of basic functionality of firearms but also the law. Heller noted that “If weapons that are most useful in military service – M-16 rifles and the like – may be banned, then the Second Amendment right is completely detached from the prefatory clause. But as we have said, the conception of the militia at the time of the Second Amendment’s ratification was the body of all citizens capable of military service, who would bring the sorts of lawful weapons that they possessed at home to militia duty.” The Court went further stating, “[w]hatever the reason, handguns are the most popular weapon chosen by Americans for self-defense in the home, and a complete prohibition of their use is invalid.” The United States Supreme Court has made it clear that the purpose of the Second Amendment was not for hunting or sport, but for defense purposes.

Regardless of our political view of firearms, the fact remains that we have the Second Amendment and it exists because the founding fathers saw a need for such a civil liberty to be solidified in our Constitution. The Constitution provides a mechanism that allows for this to change and it is not the common understanding of an “alive and breathing” document. No, it is called the Amendment process, and at the point in our future we decide we no longer need or desire this right, we can always amend the Second Amendment. Until then, we must respect our fellow citizens civil rights of all types to include the Second.

2 McDonald v. Chicago, 561 U.S. 742 (2010)
3 Tyler v. Winkler, Case No. 13-1876, 6th Circuit Court of Appeals

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Among the scariest threats to individuals who invest their hard-earned money in hopes that it will grow and provide income and security in the future is the growing prevalence of fraudulent Ponzi schemes. Even the most educated and sophisticated investors can lose millions at the hands of a deceptive scheme.

This past summer, numerous Central Ohioans learned that the money they entrusted with a Massachusetts-based advisor named Raymond K. Montoya may have been lost in what is alleged to be a $30 million Ponzi-like scheme. Earlier this year, another individual named William Apostelos was found guilty of defrauding countless investors in Dayton, Ohio. The U.S. Attorney prosecuting the scheme labeled the $70 million Ponzi out of Dayton was found guilty of defrauding investors in Dayton, Ohio. Apostelos, who orchestrated the $70 million Ponzi scheme out of Dayton, portrayed himself to investors as a registered broker. A simple search for Apostelos on FINRA’s BrokerCheck would have revealed that he was not in fact a registered broker, which could have saved investors millions.

While those tools are useful, even registered brokers can go rogue and try their hand at a Ponzi scheme. Similarly, many Ponzi schemes start off as legitimate business operations and turn fraudulent. For example, a man in Michigan once leveraged a Ponzi scheme by using his failing computer company as the investment vehicle. How then can you detect a Ponzi scheme when the broker is registered and the business appears reputable? There are numerous warning signs: Ponzi schemes are able to produce high returns, for a period of time, by stringing along investors with previous investment funds. Therefore, being promised “guaranteed” high returns (in excess of 5 percent) is a glaring red flag. Consistently high returns on legitimate investments are, by nature, always accompanied with high risk. Guaranteeing a high return is therefore something that a bona fide broker should not promise. Similarly, Ponzi schemes almost always use prior investors’ testimonials about their “success” to lure in new investors. If the individual soliciting the investment focuses their attention on returns, rather than the underlying workings of the investment itself, investors should question its legitimacy.

Without a regular source of income, Ponzi schemes will eventually collapse. Knowing this, the fraudsters in charge of the scheme are constantly pressuring investors to reinvest. Additionally, Ponzi schemes are often reluctant to provide information. Excuses about missing paperwork, frequent errors or secretive strategies are all red flags that the investment may not be as it appears. Unfortunately for many individuals who invest in Ponzi schemes, they are not made aware of the fraud until it is too late. Their investments have been spent, the fraudsters are on their way to prison and the investors are left out of pocket wondering if they are going to get their money back. If the individual who solicited the investment is a registered broker, the brokerage firm where he or she is employed may be liable for the loss. Almost all brokerage firms contractually bind their customers to pursue any claims against the firm in FINRA arbitration. Arbitration is generally quicker, and more cost effective, than litigating a case in court. In addition, rather than having the case determined by a judge, the case is adjudicated by a panel of arbitrators with the authority to make a binding final decision.

The financial loss inflicted by Ponzi schemes can be devastating. Families may see their entire life savings destroyed through false hopes of consistently high returns. It is important that victims of Ponzi schemes seek the representation of legal counsel experienced in securities fraud and FINRA arbitration.

↑ https://brokercheck.finra.org/
In 2016, the Franklin County Prosecutor’s Office indicted 305 felony domestic violence cases, 160 child abuse cases, 78 sexual assault cases, 12 stalking cases and 38 child pornography cases. As of June 30, we have indicted 176 felony domestic violence cases, 62 child abuse cases, 39 sexual assault cases, 6 stalking cases and 23 child pornography cases. For purposes of this article, I will focus particularly on the cases involving sexual assault.

The Franklin County Prosecutor’s Office remains committed to not only punishing the offenders who commit these awful crimes, but also working with the victims to ensure that the outcome in each case is the best we can possibly achieve. To accomplish that, we work with victims to determine what justice means to them, which often varies with each individual. Some victims want a significant term of incarceration; some want to be sure that the offender registers as a sex offender for as long as possible; some wish to inform law enforcement whether or not he or she wishes to proceed with prosecution.

Typically, if an offender is arrested, the case will be presented to the Grand Jury for indictment within ten days. If the offender is not arrested, but there is sufficient probable cause to believe the offender committed the offense, the police can submit an investigative packet to the Prosecutor’s Office for review. After indictment, the offender will either retain counsel or be appointed counsel. The case will be assigned to a judge, and the court will begin to schedule trial dates. Cases generally take approximately six months to a year to resolve, so patience is important.

While the case is pending, victims have a number of rights, as outlined in Chapter 2930 of the Ohio Revised Code. Victims shall be given notice of all court dates, if they so desire. Victims have a right to attend any court hearing. Victims shall be consulted before any agreement to a negotiated plea, amendment, dismissal of a charge, or trial. Victims shall be notified of the outcome of any trial and be afforded the opportunity to address the court at sentencing. Marsy’s Law, a constitutional amendment to expand victim’s rights which is on the ballot in November 2017, will also provide an enforcement mechanism for victims.

The types of cases that SVU handles have unique challenges. There are still outdated societal views about the role of alcohol use in sexual assault, how a victim’s manner or style of dress and behavior “invites” an assault and/or the force required to commit a sexual assault. There are antiquated notions about how a victim “should” behave. Jurors tend to expect medical findings that are actually quite rare, even in documented cases of acute sexual assault. In our CSI-friendly world, there are also expectations about the presence of forensic evidence that are unrealistic.

Further, these are offenses that are typically committed in a clandestine environment, so eye-witnesses are virtually unheard of. In the face of these challenges, it can be difficult to convince a victim to testify and subject him or herself to potentially hostile cross-examination which will oftentimes involve an attack on their character and choices.

That is why so many of these cases resolve in plea deals to amended charges. But even plea negotiations are tricky. If the defendant is not a U.S. citizen, there are virtually no options that won’t carry the substantial risk of significant immigration consequences. Sex offender registration requirements are statutorily prescribed, so any plea to a sex offense necessarily requires an offender to be placed on the sex offender registry. And, most importantly, negotiating the amount of time an offender spends in prison is a delicate balance. Oftentimes there is, understandably, no amount of prison time that feels sufficient for such a heinous act. Parents never want anything less than life in prison for a perpetrator who has violated their child. But it is a rare case when a defendant would plead guilty to an offense and agree to serve a life sentence. Generally, in order to obtain a life sentence in a sexual assault case involving a child, the prosecutor is going to have to take the case to trial and win; which means the child will have to testify and be subject to cross-examination. And that will happen in a courtroom full of strangers, with the defendant sitting in the courtroom. That is quite a lot to ask from a traumatized child. As a result, parents are often tasked with making the difficult decision about whether to seek a reduction for an offense from one which carries a life sentence in order to protect their child from having to testify.

These cases continue to occur, for any number of reasons. What we can do to ease prosecution of these offenders is educate ourselves about the reality of sexual assaults. They can occur to anyone, by anyone. Clothing or intoxication are not invitations to assault. Every victim reacts differently – some cry, some yell, some shut down completely. There is often no witness, no biological evidence and no injury. However, despite these challenges, the Franklin County Prosecutor’s Office and our affiliated service providers successfully continue to assist victims and their families and to get justice and help these individuals start to heal.

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What the heck is a Venmo? Who is Zelle?

Dont Be Afraid of Peer-to-Peer (P2P) Payment Services

BY JEFFREY A. WILLIS

No, “Zelle” is not the most popular baby name for 2017. ZelleSM is a peer-to-peer (P2P) money transfer technology service that recently became available in June 2017 and allows customers of participating banks and credit unions to transfer money — in immediately available funds — to a third party. Zelle has partnered with most large banks and credit unions and is likely available, or will be available soon, to most of your clients.

If your bank has partnered with Zelle, you can send money at the push of a button to anyone with a cell phone number or email address regardless of whether that person uses the same bank or credit union as you. Perhaps you have heard of Chase QuickPay? Well, Chase QuickPay uses Zelle technology to transfer funds electronically to and from one’s Chase bank account. In addition, you have peace of mind knowing you have the same web-based security provided by your bank since you must log-in to your bank app or website to use it.

The greatest benefit of accepting money through Zelle is that your clients’ funds are available almost immediately, assuming your client is using an account at a participating bank. The biggest drawback is that credit cards cannot be used. Another P2P payment option is Venmo, which has been around longer than Zelle and is owned by PayPal (the precursor to modern-day P2P payment services). Venmo is similar to Zelle in that it is a P2P payment provider but, unlike Zelle, Venmo incorporates social media features. One benefit of accepting payments through Venmo is that your clients can pay with a credit or debit card, in addition to their bank account. Further, if your client is paying with a credit card, they are charged the transaction fee of 3 percent — not you. This is an attractive feature in using Venmo over other merchant payment servicing companies, like LawPay, where you are charged a transaction fee for credit card payments. One disadvantage, however, is that funds transferred through Venmo are not available immediately, at least for now. It has been my experience that the transferred funds take one to two days to become available to the recipient.

One major concern with Venmo being used in the legal profession, however, is whether the social media aspects of its payment platform, including comments that are posted for others to see, result in a violation of an attorney’s ethical obligations (e.g., Rule 1.6 of the Ohio Rules of Professional Conduct—confidentiality of information related to the representation of a client). When using Venmo, you can choose either to sync Venmo with your contact list, which will automatically friend those contacts that use Venmo, or you can invite people to be your friends. When initiating a transfer, you can add a comment such as “Go Cavs” or “Payment of July legal invoice.” Not only can you see these comments, in addition to seeing the names of the payer and payee, all of your friends and your client’s friends can see that information as well. To avoid potential ethical violations, including the impermissible disclosure of client information without informed consent, it is imperative for attorneys accepting payments from clients to update Venmo’s privacy and sharing features so that only the participants to the transaction (payer and payee) can view transaction details and only have the ability to share the transaction details — not your client.

If you choose to use either of these P2P service providers (or other providers such as Snapcash, Square Cash or Popmone) make sure you update the privacy and sharing features to avoid potential ethical violations. If a client sends you money using a P2P payment service in which you have not created an account, check to see if you are able to make all past transactions private — Venmo has this feature. Also note that these P2P payment providers put caps on the amount of money that can be transferred per transaction, usually between $5,000 and $10,000.

Also, similar to accepting money through your credit card processing provider, it is imperative that your client’s funds go into the proper bank account. Only earned fees are permitted to be deposited into your business operating account, while funds representing unearned fees (e.g., retainers and advanced fees) are permitted to be deposited into your IOLTA account. Unfortunately, you can only choose one active account where funds sent through Zelle get deposited. Venmo gives you a choice of multiple accounts. In order to avoid these funds being deposited into the wrong account, you can choose either to use your IOLTA account for all deposits from Zelle and Venmo (which would require you to transfer earned fees into your operating account), or you can use your operating account for Zelle and manually switch to your IOLTA account to receive unearned fees when you know a payment is coming. This is one disadvantage compared to LawPay, which allows for deposits to be separated into your IOLTA and operating accounts without any initial commingling of funds.

Since these P2P payments services are fairly new, especially Zelle, I have found it helpful to update my invoices to my clients with information on where they can make these P2P payments to me — maybe you will choose to do so, too.

In summary, Zelle and Venmo can be great payment options for your clients. I have found that these transactions significantly reduce the time it takes to get paid and the administrative time associated with keeping record of, and depositing, checks sent in the mail. These P2P services are also helpful if a client needs to send you money right away. Plus, both have no monthly fees to use their services. Please be sure, however, to update the privacy and sharing features so that only you and your client can view transaction details and only you have the ability to share the transaction details.
Fall ‘17: Haunting Legal Issues

Simply Obsessed: What Makes a Stalker?

BY STEPHEN STEINBERG

As a Columbus City Prosecutor, I have prosecuted numerous criminal cases over the past thirteen years that involve stalking. Additionally, being a prosecutor offers a clear view into many weird and creepy stalking situations that my colleagues are prosecuting. The examples I give below are just a sampling of the spookier stalking behavior that I, or my fellow prosecutors, have encountered.

One stalker waited in the bushes of his former girlfriend’s house after having texted her a mix of pleading and menacing messages. Another wrote two long novels about his former girlfriend, casting himself as an aggrieved hero and his girlfriend as a seductive villainess; then he contemplated writing a third. Another stalker faked his own death, sent funeral notices to his victim, a woman he wanted to date, and faked correspondence from his sister informing the victim that a puppy would be sent to a kill shelter if she failed to appear at his funeral.

When I learn about these cases, I ask myself why stalkers are behaving this way: what are the goals that this behavior is attempting to accomplish; what were the initial motivations for the behavior? I can never answer this satisfactorily, and creepy human interaction always baffles me. Experts, however, do classify stalker behavior by motivation and goals.

Pamela Kulbarsh, a psychiatric nurse who has worked with law enforcement, authored an article on Officer.com, in which she describes three types of stalker obsessions: the simple obsessional stalker, the love obsessional stalker and the eroto-manic stalker.

A simple obsessional stalker usually knows his victim well. Frequently, this victim is a former spouse, intimate partner, co-worker or even boss. Mending the relationship or exacting revenge for a perceived wrong motivates a simple obsessional.

By contrast, a love obsessional stalker does not know their victim well. These stalkers develop a love obsession or fixation on their victims. A love obsessional is motivated to make the victim aware of their existence and to make the victim fall in love with them.

An eroto-manic stalker deludes him/herself into believing a victim returns their love. The love contemplated is not limited to erotic love, but frequently some higher spiritual love. An eroto-manic often believes the victim is their perfect match.

The former boyfriend hiding in the bushes was a simple obsessional stalker who had also sent text messages in which he had alternately pleaded for reconciliation, threatened retribution and catalogued the victim’s wrongs. The stalker was seeking to mend the relationship and exact revenge for the fact that the victim had left the relationship.

Likewise, the stalker who had written two novels about his victim was also simple obsessional. In both novels, the stalker portrayed his victim as a conniving seductress who had bled the protagonist, a laughably disguised version of the stalker, of both his money and his vitality. The novels, which were no more than lists of relationship transgressions of the victim, were undoubtedly written to embarrass and belittle the victim.

And like the previous two stalkers, the one who faked his own death is also simple obsessional. He wanted to punish his victim for refusing to advance their relationship by convincing her he had killed himself and orphaned a new puppy over her.

In the criminal cases our office prosecutes, stalkers’ conduct often generates convictions for any three offenses: menacing by stalking, violation of protection order or aggravated menacing.

Although each of these offenses carries a maximum of six months in jail, stalkers generally do not serve this time initially. Rather, negotiation frequently results in an agreement between both defense and prosecution for two years of probation with numerous conditions selected to attempt to prevent the continued behavior.

Such probation conditions, which always include a provision that specifically prohibits the stalker from contacting his victim, are especially necessary in the cases involving simple obsessional stalkers. In these cases, the prosecution’s primary goal is to keep the stalker away from his victim.

Another method of classifying stalkers by motivation and goal divides stalkers into five categories. This analysis is part of a stalking risk profile developed by Paul Mullen, Michele Paté and Rosemary Purcell, which you can view on www.stalkingriskprofile.com.

Continued on page 46

One stalker waited in the bushes of his former girlfriend’s house after having texted her a mix of pleading and menacing messages.
The five categories listed are the rejected stalker, the resentful stalker, the intimacy-seeking stalker, the incompetent suitor stalker and the predatory stalker.

A rejected stalker victimizes someone with whom they were in a close relationship, which closely resembles a simple obsessional stalker. The victim may be a former intimate partner or close family member. A rejected stalker is initially motivated by the possibility of reconciliation or to exact revenge. Frequently rejected stalkers appear to want both resolution of the relationship and revenge for perceived wrongs. In some cases, the stalking behavior serves either as a substitute for the relationship or as method to salvage the stalker’s self-esteem.

A resentful stalker feels mistreated or that he/she is a victim of some form of injustice or humiliation. A resentful stalker’s victims are generally strangers or acquaintances of the stalker. A resentful stalker is initially motivated by a desire for revenge, but the motivation often changes to maintaining the sense of power and control the stalker feels over their victim. A resentful stalker is often suffering from a mental illness.

An intimacy-seeking stalker is generally lonely and without a close confidante. Intimacy-seeking stalkers are motivated to establish an emotional connection and intimate relationship with their victims. The stalking behavior may continue to be motivated by the gratification that comes from the belief that the stalker is closely linked to another person. Like a resentful stalker, an intimacy-seeking stalker may suffer from eroto-maniac delusions about his victim, or the false belief that the stalker and the victim are in a relationship.

An incompetent suitor is a stalker who acts out of a desire for a short-term sexual relationship, and often stalks for a brief period. In cases of persistent stalking of this nature, the stalker is often unaware of the victim’s distress, possibly because of a cognitive limitation or a social disability.

Finally, a predatory stalker is motivated by the desire to satisfy a deviant sexual urge. Often, a predatory stalker is a voyeur of a sexual assailant attempting to obtain information about a victim to set up a sexual assault. A predatory stalker generally enjoys the sense of power and control that comes from stalking a victim.

The three cases cited above are all rejected stalkers. All three had revenge as a motivation; at least two, the guy in the bushes and the novelist, wanted both some form of reconciliation and revenge. Certainly, the fear and pain their actions caused their victims eliminated the possibility of reconciliation.

Related to the lack of self-awareness is the lack of empathy. The weird creepiness of these stalkers’ behavior demonstrated a complete disregard for the feelings of their victims, who were all upset and terrified.

Although I accept the stalker classifications presented by the behavioral experts, I wonder constantly what stalkers were thinking. Perhaps it is insanity to attempt to impose rationality on behavior that is fundamentally irrational, but behavior conduct seems to make sense only in the context of the most harmful motivations.

Specifically, of the three rejected stalkers discussed earlier, two clearly wanted both reconciliation and revenge. And perhaps the reason I find stalking behavior difficult to understand is that the behavior is irrational; it comes from the confluence of the lack of empathy and self-awareness. But this irrationality, the apparent disregard for others’ perception and feelings, combined with the dissonance between a rational person’s goal and a stalker’s tactics, makes stalking creepy and spooky. And generally incomprehensible.
Addiction Stabilization Center May Provide Welcome Relief

BY HON. DAVID E. CAIN

The frightening, expensive and frustrating cycle of an addict overdosing on heroin and being sent to the hospital only to overdose again is behavioral healthcare’s currently exploding crisis. No class of society is immune as the plague confounds everyone: from families to emergency responders, health care providers to the judicial system, to the bulging correctional facilities where people get even sicker.

If an overdose is discovered and 911 is dialed, emergency personnel rush to the scene for treatment. The drug abuser is then transported to the nearest hospital emergency room (ER) for treatment. The drug abuser is then transferred to the crowded ER as soon as the emergency has passed – or the coroner’s office arrives.

Unfortunately, many survivors turn back to the addictive drug as soon as they get home or turn to burglary to feed their addiction. Sometimes it just goes on and on. Sometimes the drug abuser becomes an abuser of the rescuer: “You killed my life.”

Families may blame doctors who prescribed the first pain pills. A politician may blame the drug company that manufactures them. But nothing is going to work unless the addicts, some who turned to heroin because they couldn’t afford the pills, seek help.

A shortage of admission capacity in residential treatment facilities is now a huge problem. If an addict hits bottom and is ready for treatment, we can’t just say, “Hold that thought!” while traditional treatment programs fall further behind. But there’s still hope, a chance to reduce the cycles: a plan to lower the number of Narcan administrations by first responders that have risen to 10-15 times a day in the city of Columbus.

The idea for an Addiction Stabilization Center came from the Franklin County Opiate Task Force under the leadership of David Royer, chief executive officer of the ADAMH Board of Franklin County. Royer presented the concept in May to Shawn Holt, the fairly new President/CEO of Maryhaven. Inc. The center opened within four months, the first of its kind in the country. Maryhaven, the largest drug treatment provider in central Ohio, is operating the Addiction Stabilization Center, giving EMS and police a 24-hour, 7-day a week place to transport people who have overdosed.

That place is Admission and Triage. The triage has five beds and provides emergency treatment to patients for a maximum of 23 hours; it’s the first of three components at the center. The second is detox with 20 beds and a length of stay between three and seven days. The third is long-term residential with 30 beds and a length of stay of at least 14 days.

Holt’s hopeful prediction is that 65 percent of people in triage will elect to go for further treatment, 75 percent of those admitted to detox will choose to continue and 80 percent in long-term residential will complete the program successfully.

Outside of Admission and Triage, Maryhaven’s beds are on the fourth floor that formerly housed some of its administrative offices. Originally, it was filled with hospital rooms that are still there. Although a little drab, the floor was converted with little expense beyond the creation of a nurse’s station near the centrally located elevators.

However, the greater challenge was the need to recruit, hire and train 100 new staff members, including 30 registered nurses.

That task went to Andrew Moss, past manager of medically assisted services at Maryhaven and site director at the new center. Meanwhile, Holt was meeting with Franklin County EMS and the City Attorney’s Office to contract for around-the-clock paramedic staff at Triage and meeting with police, fire and sheriff personnel to establish protocols for communication. Royer worked to leverage all eligible federal, state and local resources to finance the program which adds about $5 million to Maryhaven’s budgets for fiscal years 2017 and 2018. The capital budget for the new center is $500,000; the rest is for operational expenses which total about $6.5 million for the two fiscal years. The gap will be filled by “repurposing” funds in Maryhaven’s existing 2017 and 2018 fiscal year budgets, according to Maryhaven CFO Robert Davis.

The process to establish the center moved with remarkable quickness, no doubt aided by the public’s awareness of how fast and wide the opiate plague is spreading. On the average day in Ohio, six people die of overdoses. Statewide, there were more than 4,000 heroin (or its synthetic relatives) overdose deaths last year, with Franklin County leading the way. During the first half of this year, overdose deaths in the county increased by 66 percent.

Beyond the emergency treatment, Maryhaven will concentrate on Motivational Interviewing, Medication Assisted Treatment and Peer Support Coaching. Recent research indicates that the highest success rates (50 to 60 percent) is accomplished by giving opiate addicts a traditional 12-step program, like Alcoholics Anonymous, on top of medication such as methadone, buprenorphine or vivitrol.

The facility at 1430 S. High Street has another tenant, Select Medical, that specializes in acute chronic care, and a couple vacant floors.

It is in a zip code with the highest number of overdoses. While negotiating for a longer lease, Holt was asked by a concerned owner of the building what the addicts look like. “They look like you and I,” he responded.

Holt became the new CEO at Maryhaven last August to succeed Paul Coleman, who took Maryhaven from a three-day alcohol program in an old tuberculosis hospital to a $25 million-a-year operation in a new, expanding facility at 1791 Alum Creek Drive.

During my nearly 25 years as a Maryhaven board member, I have never seen the budget jump so much, so quickly. With the addition of the S. High St. program, the total budget for fiscal 2018 will be nearly $38 million, including operations in Delaware, Morrow, Marion, Union and Crawford counties. Judges Lisa Sadler, Charles Schneider and Guy Reese are also longtime board members.

Holt formerly ran the St. Vincent Family Center. At his first board meeting last year, he asked if board members had any special requests. The response was that the waiting time for admission to detox needed to be reduced – from one to two weeks or longer with a daily waiting list of 10 to 100 people. Within a couple of months, 100 percent were being admitted within one week and 52 percent within one day. The waiting list is now down to 10-15 people.

With people running programs like the one at Maryhaven, Ohio may be able to reverse the cycle caused by this horrific addiction.
Rosemary’s life has always been accompanied by music. It all began at age 7 when a Baldwin piano was delivered to their house: Rosemary quickly volunteered to be the sibling who took lessons to learn the intriguing instrument. She’s been tickling the ivories ever since.

Interestingly, her piano lessons also led her to her lifelong hobby of needlepointing. During her teen years, while waiting on her parents to pick her up after piano lessons, her teacher suggested she use that time to needlepoint. Despite her initial reluctance, she quickly embraced this hobby of creating artwork for her home and friends.

Decades later, in her unending quest to master the art of piano performance, Rosemary continues to take piano lessons with the goal of playing even harder and more complicated pieces. Her current teacher is an Otterbein College professor who plays duets with her, a method that assists Rosemary with her performance rhythm.

Rosemary admits to purchasing and performing not only classical music pieces, but also other genres, such as television themes, cowboy music, college fight songs, Beatles tunes, pop music and, especially while her children were young, Disney tunes. She’s sure that she played Winnie-the-Pooh’s theme music more than 1,000 times when her son and daughter were children!

Fortunately, they’re grown now: her son, Michael, is with Ernst & Young, and Sarah is a D.C. lawyer and piano player.

Rosemary practices about an hour every day, as she proudly relates, “on her 6-foot black Baldwin grand piano.” On weeknights, she plays the piano while her husband cleans up after the dinners she’s cooked.

Rosemary was an active committee member for the project to convert the old Thomas Worthington High School into an arts center, she served as a Girl Scout troop leader and served for two two-year terms on the CBA’s Board of Governors. She also created and has, so far, been the sole Chair of the CBA’s E.A.G.L.E. (Extraordinary Attorneys Got Legal Expertise) Committee, which allows “experienced” attorneys to meet socially.

Rosemary believes that even if one can’t create, one can at least appreciate the arts. She also encourages people to learn about music and the arts through her blog she’s named “10,000hours88keys,” found at: rosemaryebnerpomeroy.blogspot.com.

Rosemary is already planning for her future retirement from practice. She reports that she has been developing a repertoire of 40 popular musical pieces so she can try out for her fantasy career of being the Von Maur Department Store piano player.

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Rosemary met her husband, Mark Pomeroy, in law school in Detroit and began practicing there in 1988. After they moved to Columbus, she focused her career on estate planning, probate, adoption and assisted reproductive technology law, and has primarily been a solo practitioner. Mark is an in-house attorney with J.P. Morgan Chase, handling I.P. and technology issues; he is also interested in music and the arts. Mark and Rosemary both sing in their St. Peter’s Church choir and have a history of singing in competitive a cappella barbershop quartet groups.

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Rosemary is already planning for her future retirement from practice. She reports that she has been developing a repertoire of 40 popular musical pieces so she can try out for her fantasy career of being the Von Maur Department Store piano player.
Verdict: $22,832.51 (Reduced to $11,416.26 upon finding of 50 percent contributory negligence.)

Automobile Accident.

On September 6, 2012, Plaintiff Danielle M. Tasner and Defendant Linda L. Lowe were headed in opposite directions at an intersection on Little Turtle Way. Ms. Tasner attempted to turn right while Ms. Lowe attempted to turn left. As the two vehicles were turning, Ms. Lowe's vehicle struck the driver's side of Ms. Tasner's vehicle. Ms. Tasner claimed that she suffered injuries to her head including a concussion, post-concussive syndrome and later, occipital neuralgia as a complication of the concussion. She suffered from chronic headaches for which she underwent radiofrequency ablation therapy and nerve injections. She also had pain on the right side of her chest and lower abdomen from the seatbelt. Ms. Tasner alleged that Ms. Lowe was liable for the accident by failing to maintain her lane when turning and failing to keep a proper lookout to avoid her. Ms. Lowe denied liability and claimed that Ms. Tasner was the one who failed to maintain her lane and failed to keep a proper lookout. She also denied that the accident could have caused the extensive injuries claimed by Ms. Tasner. The jury awarded Plaintiff $15,221.67 in past economic damages and $7,610.84 in past non-economic damages for a total of $22,832.51, but found that Ms. Tasner was 50 percent responsible for the accident, thereby reducing her recovery to $11,416.26. Medical Specials: $107,758.80 ($45,000 accepted by medical providers).


Defense Verdict. Automobile Accident.

On April 30, 2011, Plaintiffs Karie Gallegos, 46, and Paul Gallegos, 47, were rear seat passengers in a vehicle that was rear-ended by Defendant Brian Barnett. Plaintiffs claimed that Mr. Barnett was looking at his GPS just prior to the collision and failed to maintain an assured clear distance. Ms. Gallegos felt pain in her neck, left shoulder and lower back after the accident. She went to her primary care physician and then had physical therapy for four months following the accident. She was involved in a second accident in May 2012. She was diagnosed with sprains of her cervical, thoracic and lumbar regions and told that the second accident exacerbated the symptoms from the April 2011 accident. She was referred to Jason Dapore, D.O., a sports medicine physician, and continued to receive treatment from him for the next several years. Mr. Gallegos experienced a visual disturbance in his left eye and pain in his right shoulder after the April 2011 accident. He underwent physical therapy and his symptoms resolved. Mr. Gallegos settled his claim against Mr. Barnett prior to trial. Mr. Barnett did not dispute that he was responsible for the accident, but argued that Ms. Gallegos suffered only minor injuries in the accident and that her treatment was related to the second accident. The jury concluded that Mr. Barnett's negligence was not the proximate cause of Ms. Gallegos' injuries. Medical Specials: Approximately $25,000 ($15,700 after reductions). Lost Wages: None. Last Settlement Offer: $40,000.00. Last Settlement Offer: $12,500.00. Length of Trial: two days. Plaintiff's expert: Jason Dapore, D.O. Defendant's Expert: None. Counsel for Plaintiff: Curtis Fifner and Sara C. Nichols. Counsel for Defendant: David L. Simms and Rachel L. Ferrara. Judge Patrick Sheehan. Case Caption: Karie Gallegos, et al. v. Brian J. Barnett. Case No. 15 CV 1613 (2016).

Defense Verdict. Automobile Accident.

On October 15, 2009, Plaintiff Kim McQueen attempted to cross Broad Street outside of a crosswalk. She crossed the eastbound lanes and walked at the center line for approximately 10 seconds for the westbound traffic to clear. Traffic was stopping to allow her to continue across the street when Defendant Glenn Perry came upon Ms. McQueen. He attempted to stop to avoid striking her, but was raining and his vehicle slid into her, pushing her to the ground. Ms. McQueen's left shoulder AC joint separated and she suffered a strain and non-displaced fracture of the sacral ala, the triangular bone between the hip bones. She was transported to Grant Medical Center where she remained for two days before being discharged to a rehabilitation facility. She remained at the rehabilitation facility for another 30 days. Plaintiff argued that she had established the right of way and that Mr. Perry had a duty to control his vehicle and look out for pedestrians. Mr. Perry argued that McQueen's negligence in crossing outside a crosswalk was the sole cause of her own injuries. Medical Specials: $41,368.99 in past medical specials (reduced to approximately $10,000) and $50,000 in future medical specials. Lost Wages: Not itemized. Last Settlement Demand: $100,000.00. Last Settlement Offer: None. Length of Trial: two days. Plaintiff's Expert: Robert Corn, M.D. (orthopedic surgeon). Defendant's Expert: none. Counsel for Plaintiff: Anthony Palombo. Counsel for Defendant: Belinda S. Barnes, Magistrate Pamela Browning. Case Caption: Kim McQueen v. Glenn C. Perry, Case No. 14 CV 19454 (2016).

Defense Verdict. Medical Malpractice.

In November 2011, Plaintiff Mark Morgan, 40, went to Mount Carmel Hospital for a hip replacement surgery. The surgery was performed by a resident under the supervision of an attending physician. No complications were encountered during the surgery. However, Mr. Morgan was later found to have damage to his sciatic nerve. He went on to develop reflex sympathetic dystrophy, a complex regional pain syndrome. Mr. Morgan also claimed that he sustained an injury to his chest. Mr. Morgan sued the resident and attending and Mount Carmel Health Systems. He dismissed the physicians before trial but pursued his claims against Mount Carmel, as the entity responsible for the resident's negligence. Plaintiff's theory was that the nerve damage was caused by a hematoma that he developed post-operatively and that the resident failed to properly monitor him and diagnose the hematoma.

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Auto Accident Jury Trials, 2016

- Eight of the 13 auto accident trials ended in plaintiff's verdicts.
- The damages awarded to plaintiffs ranged from $3,087.05 to $10,988,793.11. In two cases, the damages were reduced based on findings of contributory negligence. In one case, the damages were stipulated. After removing the highest and lowest verdict, the mean verdict was $10,878.92. The median verdict was $17,826.83.
- The non-economic damage awards ranged from $0 to $10 million and 0 to 91 percent of the total verdict. With the highest and lowest verdicts removed, the range of non-economic damages awards dropped from $500 to $7,610.84 and 16 to 44 percent of the total verdict.

By comparison:

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* The case that resulted in the $10.9M verdict is still in litigation on post-trial motions.

Medical Malpractice Jury Trials, 2016

- Ten medical and dental malpractice cases were tried to verdict in 2016.
- In five of those cases, the plaintiff prevailed. None of the prevailing claims involved wrongful death. However, all of the prevailing plaintiffs alleged some degree of permanent injury.
- In four of the five cases resulting in plaintiff's verdicts, the jury award for non-economic damages exceeded the statutory cap.
- Of the five cases that resulted in plaintiff's verdicts, four are still being litigated on either post-trial motions or appeal.

By comparison:

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* The list of civil trials was derived from a list of cases for which jurors were requested from the Franklin County Clerk of Courts Office.