In this issue, Columbus Bar Lawyers Quarterly dives into the exciting world of sports law: from agency to contracts, concussions to tax exemptions and liability to cycling. This issue also explores professional conduct, voir dire, pro bono and much more.
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LAWYERS QUARTERNLY

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CBA: The Professional and Personal Value of Membership

I’ve been practicing in the state of Ohio for almost 25 years. Within days of learning that I had passed the bar exam in July 1992, I joined the Columbus Bar Association—a product of my mentors, who were from the generation who “took the bar, passed the bar and joined the bar.” CBA membership was a given.

Twenty-five years later, membership in the CBA is no longer assumed. This new reality, which every professional association is now challenged with, has forced me to reflect on the value of CBA membership: why did I join and why have I stayed? The answer for me is twofold. It is both professional and personal.

For me, the CBA exemplifies the many unique facets of the practice which make it a profession and not just a job: the search for knowledge, scholarship, honor, personal integrity, leadership, being a guardian of our justice system and engaging in generous public service. The CBA is a gathering place for our community of lawyers where each of these traits is fostered and developed.

The daily exchange of ideas, collegiality among members, commitment to our judges and the legal system, and dedication to community service and access to justice are apparent in almost every interaction I have at the CBA. So, if you haven’t been to a committee meeting, a happy hour at the art museum, a TESLA test drive or a To Kill a Mockingbird CLE recently, I urge you – all of our members (young and old) – to examine (or re-examine) the wide range of programs and services the CBA offers to support you and engage in something that will benefit your practice or simply sparks your interest. Here’s just a sampling:

• The CBA’s **substantive law committees** are a great way to jump in, meet other practitioners in your area and exchange ideas about your area of the law. There are more than 25 practice-specific committees to choose from.

• **Service committees** are another way to meet attorneys who, like you, want to invest in the profession and our own community of lawyers. Take a look at the remarkable works of the Professional Ethics Committee, the Judicial Screening Committee or the Pro Bono Committee as examples of lawyers who are pouring their time and talent back into our profession.

• The CBA’s **social committees** are simply fun. If you want to remember why you went to law school, come to a New Lawyers Committee event – you’ll be overwhelmed by the energy and enthusiasm of this group. On the other end of the spectrum is the EAGLE Committee – experienced lawyers (in practice and age) who simply want to engage with their colleagues in a social setting.

• Our **CLE programming** is cutting edge, and if you didn’t know, we now offer an entire menu of online CLE programming to meet the needs of every busy attorney.

• The CBA also offers a host of **practice development tools** which might be worth a look, or a second-look. That includes practice tools like Fastcase, CLE discounts, marketing tools like Find a Lawyer and the Lawyer Referral Service, strategic placement in Business First and an updated online digital directory which can now link videos and other innovative marketing pieces.

• We’ve also partnered with more than 30 different businesses to provide **member-only discounts**. Honestly, until I worked on a taskforce evaluating CBA member benefits this winter, I had no idea that I could buy discount tickets to Cedar Point through the CBA to enjoy with my two roller-coaster loving girls this summer.

On a personal level, CBA continues to humanize the profession in an era when technology can make it lonely. As practitioners, with our dependence upon e-mail, text and voicemail, we can all go days without ever actually talking or engaging with another person.

On a personal level, the CBA continues to humanize the profession in an era when technology can make it lonely. As practitioners, with our dependence upon e-mail, text and voicemail, we can all go days without ever actually talking or engaging with another person. But the CBA brings the human back into the profession in an era when technology can make it lonely. As practitioners, with our dependence upon e-mail, text and voicemail, we can all go days without ever actually talking or engaging with another person.

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Bar Insider

CBA Incubators: Where Are They Now?

BY JOCELYN ARMSTRONG

April 2011 was the beginning of an exciting adventure for eight new lawyers – the launch of Columbus Bar inc, a pilot incubator program. The CBA was the first bar association in the country to develop an incubator program for new lawyers interested in establishing a solo law practice. The program has received praise both locally and nationally.

“This has been one of the most rewarding collaborations we’ve ever been a part of. The entire legal community has come together to support new lawyers, who are trying to start their own practice,” CBA Executive Director Jill Snitcher McQuain said. “This has been a true labor of love with the underlying goal of protecting clients and creating great lawyers through a supportive environment of mentors, educators and hands-on training.”

Through educational programming and interaction with mentors, the program aims to reduce the learning curve and false starts for the benefit of the lawyers and the clients that they serve. The program was intended to accelerate the successful development of new lawyers in an environment that provides an array of business support resources. The Columbus Bar Association provides an office facility, office equipment, access to attorney mentors, training on a variety of law practice management issues and specially designed networking opportunities to help new lawyers build a successful practice based on sound business principles.

Six years later, CBA inc has become a self-sustaining program. Many of the graduates remain in central Ohio and are contributing to making Columbus a great place to live and work. Some participants remained in solo practice while others found their niche in different organizations.

Sean Casey is an associate with Jurca & Lashuk, LLC and a member of the Franklin County Court of Common Pleas Notary Committee. Sean found the mentoring component of inc to be invaluable.

“The inc program provided a network of attorneys that graciously made themselves available to us to discuss case strategy and share advice on both the practice of law and the business of it,” Casey explained. “When you are trying to build something out of nothing, it is extremely helpful to know that you are not alone. There are others that have made it happen, and that are willing to support you as try to make it happen, as well.”

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Mary Lewis Turner entered CBA inc as a postgraduate fellow from the Moritz College of Law. She built a practice while developing her skills in worker’s compensation and domestic relations. Turner agrees with Casey that mentoring is an integral part of the program.

“The attorney mentors provided a supportive environment for me to be able to practice different types of law and to learn how to run my own business.” Turner joined Einstein Law as an associate in 2012, gaining a new mentor and friend.

“My participation in the CBA inc program led me to the job that I have today in my chosen practice areas of employment law and family law. The connections I built through the CBA inc program and the Columbus Bar Association are as valuable to me today as they were when I first started practicing.”

Mary Lewis Turner

Unlike many new attorneys, Heather Clingerman entered her first year of solo practice with a singular focus: domestic relations. She observed how divorce and custody issues impact families and wanted to ensure that they had a caring guide through the process. Heather’s passion for children’s rights and education led her to the Department of Education.

Heather Clingerman

“CBA inc provided me with an opportunity to meet with other professionals who were willing to share not only legal tools, but the important business management strategies every new business needs to grow and succeed,” Clingerman said. “I am no longer a solo attorney in private practice, but I still use the skills I learned from my time with the program.”

Rebecca Kells has built a multi-practice firm focused on providing clients with high quality and cost-effective legal services. She is also the chair of the CBA’s ADR committee and very involved in her community.

“The Columbus Bar inc program was an invaluable resource for me when I established a law practice as a newly admitted attorney in Ohio. With advice from mentor attorneys, I learned the art of practicing law,” Kells said. “I developed law firm management skills by applying the program’s training on a range of issues, including ethics, case management and trust account management.”

Columbus Bar inc past participants are forging new paths at law firms and government agencies throughout the state. They eagerly share their experiences with current participants and encourage them toward success. Past participants have become a network for referrals, peer mentoring and collaboration. They help each other build competencies in various practice areas and professional development. Inc attorneys past and present share life experiences beyond the profession.

To learn more about the inc program, visit our website: www.cbalaw.org/inc

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A few of our graduates:

Rebecca Kells

Mary Lewis Turner

Sean Casey

Heather Clingerman

Rebecca Kells

Six years later, CBA inc has become a self-sustaining program. Many of the graduates remain in central Ohio and are contributing to making Columbus a great place to live and work. Some participants remained in solo practice while others found their niche in different organizations.
Chief Penny Perry is the first female chief deputy in the history of the Franklin County Sheriff’s Office. In January 2017, Sheriff Dallas Baldwin promoted her to Chief Deputy of the Corrections Division. As Chief Deputy, she is responsible for operations at the two Franklin County jails: one downtown and one on Jackson Pike. Chief Perry spent all but nine months of her career in the Corrections Division.

Chief Perry began her law enforcement career as a third-shift deputy sheriff at the Jackson Pike jail. She moved up the ranks, all the while learning from others, including Major Al Strickler, who was the commander of the downtown jail. In 2012, she was promoted to the rank of major and commanded the jail where she first worked as a third-shift deputy.

I asked Chief Perry for an interview for Columbus Bar Lawyers Quarterly. We talked about law enforcement, the jails, her career and her strong-willed mother.

Q: Why did you decide to pursue a career in law enforcement?
A: It was a matter of circumstance. I left my hometown of Jackson, Ohio, and after pursuing a number of opportunities that turned into dead ends, I found my way to a seasonal job at UPS in Franklin County. At the time, I was having trouble finding my own career. I had tried just about everything in order to make ends meet. I was about everything in order to make ends meet. I was a willed mother: We talked about law enforcement?

Q: Was your mother a big influence in your life?
A: Yes, she was a huge part of my life. Both of my parents were self-employed and worked hard, but Mom was a self-made woman. She was one of 12 siblings, so she had a will to survive. Mom had waited tables at several restaurants and hotels in Jackson. She saved enough to open a restaurant, which she owned until she sold it in the 1980s. I waited tables and learned how to close out a register at that restaurant when I was a kid. Mom always told me that things happen for a reason, and I believe that even more today.

Q: What does being the first female chief deputy at the Franklin County Sheriff’s Office mean to you?
A: It was a big accomplishment for me. There were a lot of women who came before me. They paved the way for me to become a chief. I just happened to be the first. In 2012, I became the fourth female to hold the rank of major at the Franklin County Sheriff’s Office. The other three women that were majors had a lot to do with me becoming a chief deputy.

Q: Did you ever think that you would become a chief deputy?
A: Not really. My goal was to become a major. I had a vivid dream of having my own office and my own desk. When I was promoted to major, I finally accomplished that dream. I had an office and a desk. It was just as I pictured in my dream. I wish my mom could have seen me; she passed away before I started working as a deputy. But during the promotion ceremony, I looked out into the audience, and I could picture Mom sitting there. I felt like I had finally achieved a personal goal and I wish she could have been there to share it with me.

Q: What is one of your goals that you would like to accomplish as a chief deputy?
A: I would like to expand our Women in Leadership organization. I started the organization in the Sheriff’s Office in 2015. We want to empower women in law enforcement and help them get engaged in a leadership organization. The organization is for both law enforcement officers and civilian personnel at the Sheriff’s Office. My goal is to grow the organization from being office-specific to a regional organization that includes other law enforcement agencies.

Q: What are some things that you would like attorneys to know about the jails?
A: In the jails, there are multiple things going on at one time. Our primary responsibility is the safety and security of everyone within the jail. That includes the inmates and the staff, as well as the attorneys that are meeting with their clients. Sometimes, we have to prioritize responsibilities, and that may delay the timing of an attorney’s visit with an inmate client. It’s not that we are unresponsive; it’s just that we have a lot of things going on and we have to make sure that everyone is safe. Another point for attorneys to know is that we have policies and procedures that govern our operations. My staff is required to follow those policies and procedures. If someone experiences problems, they can call me. I can have a conversation with anyone. I accept people for who they are, and I want to make sure people are treated fairly.

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Meet the Chief: Franklin County’s First Female Chief Deputy Runs the Jails

BY ANTHONY E. PALMER, JR.

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A Pro Bono Promise

BY MELISSA M. CARLETON

In my first few months as an attorney, I dabbled in pro bono service. I was eager to work with clients, appear in court and negotiate settlements, and pro bono work seemed like a way to make that happen sooner rather than later. At the time, Legal Aid was running an eviction law clinic at the Franklin County Municipal Court, and I signed up for two sessions. It was a good experience, but then the program was discontinued. I got busy with other work and pro bono fell to the wayside for a few years. It happens.

I didn’t pick it up again until about my fourth year as an attorney. I was getting restless and, if I am totally honest with myself, burned-out. I needed something to get out of my rut, so I made a promise that I would get out of my comfort zone and try something different. In the course of the next year, I told myself I would take one CLE from Legal Aid on landlord-tenant issues and would volunteer for one case. Emphasis on the singular.

I followed through, and it was a doozy of a case. The client had more documentation than I could ever have hoped for, but if she was lucky enough to avoid the eviction on the grounds cited in the complaint, the landlord could simply file (and probably win) on other grounds that felt potentially retaliatory. The night before my first hearing, I was up until 3:00 a.m. drafting motions and coming up with case strategy. I was excited. I was incensed. I had worked myself into drafting motions and coming up with case strategy. I had hoped for, but if she was lucky enough to avoid the eviction on the grounds cited in the complaint, the landlord could simply file (and probably win) on other grounds that felt potentially retaliatory. The night before my first hearing, I was up until 3:00 a.m. drafting motions and coming up with case strategy. I was excited. I was incensed. I had worked myself into

to a particular time frame. Whatever the passion, the opportunities are endless. Worthy clients and causes are never in short supply, and helping them is part of the reason we all became attorneys in the first place.

This year, the Legal Aid Society of Columbus brought back and improved the eviction clinic as the Tenant Advocacy Project. I like participating, as I can schedule it on my calendar and be back to work before lunch. Some of my cases leave me energized. Some of them leave me frustrated. But even in the most difficult cases, I feel like I made a difference.

A promise to myself four years ago has changed the way I practice law. Hopefully, it has resulted in a few less homeless families here in Columbus. My question to you is this: is it time for you to make the same promise to yourself? One CLE. One case. Where will it lead you over the next four years?

Some of my cases leave me energized. Some of them leave me frustrated. But even in the most difficult cases, I feel like I made a difference.
The Health Insurance Portability and Accountability Act (HIPAA) is a uniform set of laws outlining a healthcare organization's responsibilities surrounding the confidentiality and integrity of patient information. This article highlights the rights guaranteed to patients under HIPAA.

To understand the rights afforded under HIPAA it is necessary to understand what the rule protects and to whom the rule applies. The rule protects health information transmitted or maintained by an organization, referred to as “protected health information” or “PHI.” PHI is, generally, information created or received identifying a particular patient’s past, present or future health condition. And the rule applies to covered entities (i.e., providers, hospitals, billers), health care clearinghouses, and the vendors that create, receive or transmit PHI on their behalf. All are obligated to protect these patient rights under HIPAA:

**Notice of Privacy Practices**
Patients have a right to know how an organization manages their PHI. An organization’s Notice of Privacy Practices (NPP) outlines how the organization uses and discloses PHI, outlines patients’ rights and provides the Privacy Officer’s contact information for complaints or questions. The NPP must be written in plain English, offered and signed during the first visit, be prominently posted and be available on the organization’s website or to any patient requesting a copy. Importantly, the NPP outlines the situations that a patient’s information may be shared without a signed Authorization.

**Access**
Patients have a right to receive a copy of their medical records within 30 days of the request, unless a denial or delay is appropriate. Patients also have a right to receive their records at a time and place convenient to them or in a preferred medium for example, through secure emailing. And the organization cannot present an unreasonable delay or barrier to a patient’s access, such as requiring in-person identity verification, access only through a patient portal online if the patient does not have an account or require a mailed request be sent. Such requirements may be considered a barrier, and therefore unlawful. But an organization can charge a cost-based, reasonable fee in responding to the request.

**Account of Disclosures**
Patients have a right to know where, to whom and for what purpose their PHI was shared. Many disclosures are exempt from this tracking rule including when a patient Signs an Authorization for the disclosure and disclosures to coordinate treatment for the patient, to bill the patient’s insurance and certain operational disclosures. If not exempt from the rule, the patient must be provided with a listing of each disclosure with the date of disclosure, name of recipient, brief description of what was disclosed and purpose for the disclosure.

**Amendment**
Patients have a right to request that changes be made to correct errors in their medical record. Organizations must accept all requests for amendment made by patients, but are not required to accept the amendments. For instance, if the patient’s records were not created by the organization or are determined to be accurate and complete no amendment is necessary. And if the amendment is not accepted, the patient has a right to know why in writing.

**Confidential Communications**
Patients have a right to be contacted in a particular way. Some patients do not want to be contacted by email or telephone, and some do not want to receive voicemails or secure text messages. Some patients only want to be contacted at work, while others only at home. Such requests, if reasonable, are usually accommodated.

**Restrictions**
Patients have a right to request that an organization restrict the disclosure of their PHI from shared treatment providers, their health insurer and other individuals associated with the organization. This includes a patient requesting that an organization not share PHI with a shared treatment provider, something usually necessary for continuity of care. For example, a patient may request that certain family members and friends involved in the patient’s care not be notified about a general health condition. Also, unless a health plan requires it, patients have a right to pay for their care out of pocket. Organizations are not required to agree with these restrictions, and even if they do agree they are exempt from the restrictions in emergency situations.

**Complaints**
Patients have a right to report potential violations of the law to the Privacy Officer at the organization or to the Secretary at the Department of Health and Human Services. The Privacy Officer must promptly investigate the complaint, all while ensuring there is no retaliation against the reporting patient.

Everyone is a patient at one time or another. And we owe it to ourselves and our clients to understand the rights provided for under HIPAA. I hope this brief summary proves to be helpful.
How to Be an Excellent Lawyer—And a Darn Good Human Being

By Judith McInturff

"If your actions inspire others to dream more, learn more, do more, and become more, you are a leader."

John Quincy Adams

Core substantive legal competence aside, there are distinct rules of etiquette and identifiable competencies that are crucial to being an exceptional lawyer. These rules and competencies are, in part, defined by Rule 3.3 of the Ohio Rules of Professional Conduct. This rule identifies the special duties expected of lawyers as officers of the court and clarifies such as superior to zealous client advocacy. Simply stated, a lawyer must avoid any conduct that undermines the integrity of our legal system. While community standard may be the ultimate arbiter of whether one will be subject to legal sanctions, we should strive to exceed the community standard rule. Best practice: when in doubt, take the high road and hold yourself to the most stellar standards humanly possible.

This leads to the inevitable discussion of what defines the lower end of the behavior spectrum. Rudimentary rules of etiquette dictate things like don't chew gum or eat in court; take care to wear business appropriate clothing (this alone could be the subject of a tome); do not use your cell phone or text during client interviews or while in court; don't talk about your weekend carousing or anything remotely personal while in view of your clients or a judge, whether in your office or at court; rise when the judge or jury enters the courtroom; don't drag your personal biases into a case or the courtroom; and do not display inappropriate body art/piercings for all to see. Let's face it – nobody, especially the judge, wants to see. Let's face it – nobody, especially the judge, wants to see... eye rolling or arm-crossing. Avoid vociferous head shaking, which is rarely true anyway. Identify that one person you respect so much that you would never want to disappoint, then adjust your behavior accordingly.

4. Listen. Be attentive and respectful of the person who simply wants to be heard. Be particularly attentive and respectful in the courtroom because those present have a legal right to be heard. It should not be lost on any of us that the word "listen" and the word "silent" contain identical letters.

5. Respond promptly. A significant amount of bar complaints arise from a perceived "failure to communicate," particularly failure to return phone calls. While we in the legal community completely understand that not every telephone call needs to be answered, the clients certainly do not. Best practice: Respond quickly to telephone calls and emails from clients and other attorneys. Sometimes the best response is a simple "I got your inquiry and I am working on it!" or "I will get back to you in a few days." Setting client expectations is what helps define "reasonable promptness."

6. Assume responsibility. Do not duck and point. With the benefits of being a lawyer come the burdens. One of the greatest burdens is that the lawyer is ultimately responsible for everything that goes right and wrong. The same rings true when confronted by an employer. Assume responsibility for an error and offer up a solution.

7. Exhibit self control. The greatest movie courtroom scenes might contain entertaining histrionics that display a total lack of emotional regulation, but in real life these scenes are rarely appreciated by a judge and may very well taint a jury. Practice emotional control. Avoid incendiary words in written and oral communications. Revisit rules 3 and 4.

8. Speak professionally. This takes practice. Use whole sentences. Be erudite. Professional speech also includes body language. Avoid vociferous head shaking, eye rolling or arm-crossing. Avoid speaking directly to opposing counsel while in court. Direct all concerns and remarks to the Judge. All of these tips are equally applicable in the workplace whether speaking with superiors or workmates.

9. Write professionally. This, too, takes practice. Use whole sentences and be erudite. Refrain from using abbreviations, colloquialisms and words of familiarity. Professionals are those who enjoy an elevated degree of knowledge resulting from completing rigorous specialized education. Words that are acceptable in the personal social media world are completely inappropriate in a professional setting. That includes emails to other employees, regardless of how well you believe you know them.

10. Exhibit tact and diplomacy. Good relationships result from communication. Great and enduring relationships result from cultivating trust. Trust results from sustained respectful and honest communications. The earned title of lawyer brings with it an obligation that doesn't exist only between the hours of 9 a.m. to 5 p.m. We are attorneys 24 hours a day. We have an unequivocal obligation to exhibit the best human behavior possible, without exception. Remember: we can think anything. Trouble begins when we inaccurately verbalize our thoughts. (Think road rage or teenage daughter dating conundrums. And, yes, there are ethics decisions involving both those scenarios).

Job longevity and happiness are directly related to the top ten competencies. These competencies also create opportunities. In fact, 80 percent of job opportunities ending in successful hiring were due to recommendations from other practitioners or judges. We are all watching each other — and taking notes!
For many years, Stark County Family Court, like most Ohio Domestic Relations and Juvenile Courts, offered parenting education classes for divorcing parents, but lacked an educational class for never-married parents who were filing for custody and visitation in Juvenile Court. In 2009, Stark County Family Court partnered with Dr. Barbara Fordyce, a local psychologist, to develop an education program focused on never-married parents. Dr. Fordyce developed an interactive presentation designed to address the unique issues presented by never-married parents. The materials address co-parenting, communication, child development and children’s reactions to changes in parent involvement. After developing the education portion, the next logical step was to offer a mechanism for the parents to attempt to communicate, work together and determine how they could co-parent. For many years, Stark County Family Court has championed mediation as a way for parents to jointly arrive at solutions to their custody and parenting time disagreements, so it was only natural to add a mediation component to the class.

When a never-married parent files for custody or companionship in Stark County, both are required to attend the parenting class, “Working Together for Kids,” before any court hearing is scheduled. The goal of this two-night class is to resolve all issues without a formal court hearing. The first night of class focuses on education. Parents receive information on co-parenting, respectful communication and conflict resolution, and they receive information on how children might react to the behavior of their parents. The instructors also review the steps in the legal process and the costs of litigation. The second night of class occurs one week later. If child support has not already been established, the parents meet with Child Support Enforcement Agency attorneys to determine a baseline support amount. This enables the parents to have full information when mediating.

The parties are then offered free mediation to develop a plan that addresses custody, parenting time, holidays, child support, health insurance and any other child-related issues. If mediation is successful, and the parties are not represented by counsel, the mediated agreement is read into the record and the court memorializes it in a court order that same evening. This eliminates the need for a formal court hearing, saving the parents time and money. If the parties are represented by counsel, the mediated agreement is sent to counsel for review and preparation of a formal agreement for filing with the clerk. If mediation does not resolve all issues, the parties are assigned a hearing date and the case proceeds on a normal track, with hearings, appointment of a Guardian ad Litem, pre-trials and eventually settlement or trial.

Like all Ohio Courts, Stark County Family Court is experiencing an increase in pro se filings. Approximately 65 percent of the filings referred to the “Working Together for Kids” program have at least one party not represented by counsel. The pro se filers are anxious and stressed by the thought of court, and the “Working Together for Kids” program offers them an alternative to stressful, contested litigation. The program allows them an opportunity to sit and discuss issues in a controlled setting with the help of a mediation professional. It allows them to reach mutually agreed orders without additional court costs, guardian ad litem fees and time away from work. Many of the parents who reach agreement are pro se filers. Parents who do not reach agreement are scheduled for a court hearing and are informed of the likely appointment of a Guardian ad Litem. After the legal process is explained, some pro se litigants decide to hire counsel while others continue unrepresented. Regardless of whether the parties proceed with litigation or resolve matters in mediation, they receive valuable information about cooperative parenting and respectful communication. It is our hope that they will continue to use the communication tools provided and continue working toward becoming better parents in the future.

To determine the effectiveness of the program, the Court has followed these cases over the years. One statistic is surprising. Over the past six years, the dockets indicate that 83 percent of the “Working Together for Kids” cases had either no further court involvement, or the parents were able to resolve later issues by submitting an Agreed Entry to Modify without ever coming to a formal court hearing. The parties appear to have taken to heart the lessons of cooperative parenting and respectful communication and, when changes occur, they are able to resolve the issues by agreement rather than initiating a contested court action. The idea of education and mediation together has been very successful for the never-married parents of Stark County.

In 2016, 306 parents, representing 153 cases, were scheduled to attend the “Working Together for Kids” program. Over the past six years, approximately half of the cases agreed to participate in mediation, with full resolution of issues occurring in approximately half of these mediated cases. Annually, 35 to 55 cases are closed without a court hearing ever being scheduled. In addition to the parenting benefits provided by the program, there is also a cost benefit to both the parties and the Court. When the parties mediate an agreement without a hearing, the Court’s docket is reduced by eliminating the initial hearing, the pretrial and the trial. This reduction of three hearings for every case mediated reduces the Court’s docket by approximately 105–165 hearings per year. The financial benefit to the parties can be substantial. Most parties who mediate their case will have no further court costs assessed, meaning a partial refund of their filing fee. There are no additional attorney fees incurred and no cost for a Guardian ad Litem. This program, combining parent education with mediation, offers a cost-effective process for never-married parents, allowing them the ability to reach their own parenting agreements without formal court hearings.

This program, combining parent education with mediation, offers a cost-effective process for never-married parents, allowing them the ability to reach their own parenting agreements without formal court hearings.
Voir Dire is Like a Blind Date

BY HON. FRANK FORCHIONE

As a litigator and after overseeing hundreds of jury trials, I still believe that the voir dire process is one of the most important parts of the trial. It’s also extremely challenging and difficult. At the same time, we could probably all agree that a blind date can be every bit as imposing, yet they are both so similar.

Think about it: we want to find out as much as possible about our jurors and dates in a short amount of time, so we can figure out whether we want to continue to see them. In trials, the relationship can last a day, weeks or even months. In life, it can be the same amount of time – or perhaps forever. If you keep in mind that the voir dire process is just like blind dating, these tips may help you.

Ask Open-Ended Questions

Lawyers often ask questions in voir dire that end up leaving jurors with one-word answers. Too often the line of questioning goes like this: “Can you all promise me that you can follow the law?” “Do you agree to follow all of the judge’s instructions?” “Will you keep an open mind until you hear all the evidence?” These questions only require a yes or no answer, which is the biggest mistake in voir dire. If lawyers truly want to get to know jurors, they need to ask open-ended questions. How else can we find out if they’re “loose cannons,” “Mr. and Mrs. Know-it-alls,” “a follow-the-crowder” or “I don’t want to be here”? Asking open-ended questions will get to know them. The whole idea behind these two concepts is to get both to talk about themselves, their values and beliefs. People feel appreciated when we listen to what they have to say. The best way to get to know an individual is to allow them to relax and speak. Under both circumstances, they need to feel comfortable in this strange environment. The key, then, is to listen.

First Impressions

The saying “you don’t get a second chance to make a first impression” applies in both settings. First impressions are formed quickly, especially since they weigh everything coming out of your mouth. Consider the environment: they sit there, their stomachs growling with nerves and anxiety, contemplating this initial meeting. It is important you look the part: a well-dressed and well-groomed lawyer is going to make a more favorable impression than a disheveled one. Be respectful to the judge, courtroom staff and opposing counsel. My mother always told my five sisters when they went on a date to “watch how they treat the server; that’s how you’re going to get treated in the long run.” The same generally goes during the voir dire process. Jurors will gain their own perception of the lawyer’s character as they watch them interact with the courtroom staff. The same holds true on a date: are they professional, respectful and kind? If the litigator is disrespectful, arrogant or annoying, both the juror and the date will be turned off.

A Sense of Humor Doesn’t Hurt

In most polls, humor is undeniably one of the most important traits in trying to attract someone. It can also be a valuable weapon in the courtroom. It releases tension and soothes their nerves; humor makes you seem more human and puts others at ease. A sense of humor not only helps break the ice, but helps connect with a partner who enjoys seeing you acknowledge the lighter side of things. Now this doesn’t mean that you have to try to mimic Jerry Seinfeld; however, if the situation calls for it, a sense of humor can be disarming, more comfortable and more down to earth. A good sense of humor not only strengthens your case, but your relationship, too.

Give Jurors Personal Space

A long-standing rule of social etiquette is to stay out of other’s personal space; observing this rule is very important. During voir dire and dating, people become uncomfortable if someone stands too close, thus invading their personal space. Sometimes lawyers place their elbow on the rail or simply stand in front of the jury box and lean towards them. Generally, the jurors lean backwards or immediately cross their arms defensively, sending a clear message that this lawyer is getting too close. The same goes for dating – no one on a first date wants someone who invades their personal space. Sitting too close or leaning in too far can be a turnoff. Even talking too loud or pointing are non-verbal actions that violate personal space. Pull back, relax and let things naturally take care of themselves.

Eye Contact

Eye contact is one of the easiest and most powerful ways to make a person feel recognized, understood and validated. We’ve all heard the phrase, “the eyes are the window to the soul.” They have the power to ignite a relationship. Eye contact may be one of the most important factors in determining the desirability of a prospective juror, or if your blind date ever wants to see you again. If you want someone to become interested in what you’re saying, maintain good eye contact. Not only does it establish a bond of trust, it helps capture their interest. If your target isn’t interested in making eye contact with you, or ignores your gaze, they might not be interested in your case or you.

Don’t Embarrass Them

Whether it’s voir dire or a blind date, it’s expected that some personal questions will be asked; it’s part of the process whether we like it or not. However, you will crash and burn at both if they feel you are invading their privacy. If your questions cause their armpits to drip
with sweat, you may have crossed the line. Remember, this is not the time to improve your interrogation or cross-examination skills; it’s permissible to probe, but not embarrass. It may always be best to begin with questions that put them at ease: “Tell me about your family.” “What do you do on your job?” “Describe your perfect day.” Unfortunately, questions can lead to a level of discomfort or come off a bit brash. If the juror grimaces or their face gets flushed, it may be best to apologize and move on. Your sensitivity and consideration will not be forgotten. Don’t forget, jurors and blind dates have feelings, too!

Be Confident
A pleasant, confident expression at the early stage is the best way to make a positive impact. Since jurors and blind dates will size you up quickly, it’s critical to be clear, concise, warm and humble. We are all attracted to someone who casts a smile and seems self-assured. To be persuasive, the lawyer has to be able to communicate without stumbling and rambling on. Keep in mind, there is a difference between displaying grit and being cocky. Be yourself — jurors and blind dates will look for your guidance on the path this relationship is traveling — suck it up and lead the way.

Final Thoughts
Both voir dire and blind dates are filled with moments of anxiety and trepidation; we are putting ourselves out there, yet risks are a part of life. Sometimes things we fear can turn out fun and brimming with adventure. If we consider these tips and view voir dire and blind dates in the same manner, we may find a relationship worthwhile, even if for a short time!

Honor Frank Forchione
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What’s Happening @ the Bar?
For a complete list of events, CLE programs and meetings, visit www.cbalaw.org.

**SUMMER 2017**

**july**
**13**
Constitutional Conversations: 2nd Amendment, Right to Bear Arms
Presented monthly, these events are informal, moderated conversations on modern-day constitutional issues. They are free and open to the public. July’s session will explore the meaning of the 2nd amendment at the time it was written as well as its role in our lives today.

**august**
**10**
Constitutional Conversations: Voting Rights
This discussion will be led by an academic steeped in the historical and constitutional knowledge surrounding voting rights, and will invite discussion on the application to the voting issues present daily in current news.

**august**
**23**
Executive Influence (3.0 CLE Hours)
“Executive Presence” is an intense training in managing how you are perceived, understanding and using influence, and communicating like a pro! This program is sure to transform how you work, contribute and lead.

**september**
**7**
What Does Professionalism Have to Do with Me? (3.0 Prof. Conduct CLE/NLT Hours)
Taught by instructors that are consistently rated superior and never rated boring, learn what professionalism can do to bolster your career success.

**september**
**8**
Marital Financial Infidelity (3.0 CLE hours)
Divorce cases can be tricky enough without the added allegations of financial misconduct. With the help of a forensic CPA, identifying under-reported income, spotting fraud in business books, and tracing assets aren’t so daunting.

**september**
**14**
Constitutional Conversations: Due Process and the Constitution
This discussion of the Fifth Amendment rights to not be deprived of life, liberty or property without due process of law and the Eighth Amendment right to escape cruel and unusual punishment are as relevant today as they were when written.

**september**
**19**
Jay Yano Memorial Golf Outing
Please save the date for the first annual Jay Yano Memorial Golf Outing, to be held on September 19 at Bent Tree Golf Club. Golf will be followed by dinner. More info to come!
How to Become a Sports Agent
in Seven Easy Steps

BY KEN ROBINSON

Step One
Keep an open mind to what is possible. Don’t ask “why?”

Steps 2-7
Repeat Step One.

I say this regularly, but only because it’s a fact – if you were to have read the superlative descriptor under my photograph in the 1990 Wyoming High School Yearbook, it would read: “Ken Robinson, (unlikely) President of the Senior Class – Least Likely to Become a Sports Agent.” I wasn’t anti-sport. In fact, I was a varsity wrestler (co-captain of the team at 119 pounds dripping wet), played tennis (not well) and was a happy, convivial nerd of the first order. I wasn’t anti-sport. In fact, I was a happy, convivial nerd of the first order. I wasn’t anti-sport. In fact, I was a happy, convivial nerd of the first order. I wasn’t anti-sport. In fact, I was a happy, convivial nerd of the first order. I wasn’t anti-sport. In fact, I was a happy, convivial nerd of the first order. I wasn’t anti-sport. In fact, I was a happy, convivial nerd of the first order.

I represent young men aspiring to be professional hockey players and professional hockey players aspiring to be better men and the work is wonderful. And, while becoming Drew Rosenhaus (Tom Cruise’s character in Jerry Maguire was allegedly based on Drew) or Scott Boras was not and is not a goal of mine, using my agency work to compliment my legal practice, firmly planted in immigration-related matters before various government agencies. Some of the work was family-based, some of it was employment-based work.

A statistic I found interesting: professional hockey in the U.S. is populated by approximately 70 percent foreign-born players. 70 percent foreign-born players. 70 percent foreign-born players. 70 percent foreign-born players. 70 percent foreign-born players. 70 percent foreign-born players.

My unlikely career led me to a client of mine, let’s call him grumpy “Player One,” who was dissatisfied with his agency representation. First working with him on immigration-related matters, my legal representation began to expand. I helped him with business-related matters and personal issues as our work relationship developed into a personal one. One day, he asked me if I would consider becoming his agent. I thought about it for a while – a long while, actually. But before agreeing to it, I needed to educate myself. It really is a lot of responsibility when you take on someone’s professional, and personal, life and guide him through the most productive income-earning stage of his life/career. My work was going to have an impact on Player One and his family’s well-being for years to come.

In the beginning, I didn’t know what I didn’t know. So, I set about learning as I did at the start of my legal career. I read a lot. I started with Hockey For Dummies, Sports Psychology for Dummies, the Collective Bargaining Agreement (well, most of the 450-page document, anyway), the NHL Rule Book, every book on becoming and being an agent, articles on the business model of hockey and player scouting reports. I began to communicate regularly with sports agents, professional and retired hockey players, etc. Then, I graduated from my Master’s class in hockey and agency representation to a Thursday morning Hockey Roundtable that included the likes of Coach Ken Hitchcock, now head coach of the Dallas Stars; Don Boyd, Ottawa Senators’ Amateur Scout; Jean-Luc Grand-Pierre, NHL veteran; Aaron Portzline, Columbus Dispatch sports writer; and Gary Agnew, NHL assistant coach. These were my doctoral thesis advisors.

Back to Player One. He was calling me regularly following his games to debrief; turned out I wasn’t a terrible play analyst. So, after striking up an arrangement with Edge Sports Management in New York, I applied for and became a registered NHLPA Player Representative. Unlike football or other major sports, there are fewer than 200 certified agents (maybe only 150 or so are active) in hockey. With hard work and a lot of luck, my hockey practice has continued to grow with the help of diverse personal connections: friends, scouts, referrals from players and even a birthday party connection. I was introduced to a mother of a 14-year-old during a friend’s birthday party. I had seen the kid play a few times, but he was still very young. The mom and I talked for an hour and, as it turns out, her son would become the 25th pick of the 2015 NHL draft. Another young man was referred to me because he learned from a teammate that I spoke French and he thought that was “cool” (He doesn’t speak French). And then the practice grows, adding a prospect from Long Island, another few from Denver. Hockey work is the long game. Years of work for the potential of financial reward if one has picked the right needle in the right haystack on the right farm. No longer tethered to my immigration practice, the legal work still remains close bedfellows with the agency work. My legal practice allows me to be helpful representing a handful of Russian and Czech prospects that have visa concerns for themselves and their families. I may represent an NHL coach and his family who want to become U.S. citizens or a professional hockey player in his green card petition to the Department of Homeland Security – advocating on his behalf to the U.S. government that the player is an alien of extraordinary ability and merits a green card because of it. Or if Cupid has struck, I may represent a player and his U.S. citizen fiancée or spouse and help them navigate the complicated immigration rules to allow them to live together in the U.S.

Concluded on page 24
While the path I followed may not be what was planned at the start of my legal career 18 years ago, nor does it reflect the possibilities I and others saw before me as a high school senior, there is a constant in my professional life—unlikely as it may be. Be open to the possibilities. Don’t ask “why?” Ask, “why not?”

Evidence of the continuing growth of elite level hockey in Central Ohio was further documented at the end of last month when 19-year-old Columbus native Carson Meyer was drafted by the Columbus Blue Jackets in the sixth round of the NHL Entry Draft.

How did I, the unlikeliest of people, become a sports agent? I know French, I practice immigration law and I knew a guy that threw a great birthday party. I now get to negotiate stick and equipment endorsement deals and Upper-Deck promotion packages. I sit down and chat with NHL, AHL and Junior hockey GMs about how I can help them make their teams more competitive because of the talent we represent. My agency works hard for its clients that include a number of NHL All-Stars, Stanley Cup winners, future Hall of Famers, journeymen professionals from U.S. and Europe, elite college players and Major-Jr. and Junior players, as well as high school phenomes. And, while I travel a bit, I get to do this work out of the best hockey town I know: Columbus, Ohio.

Continued from page 23

Kenneth J. Robinson, Esq.
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Have you ever wondered what the law actually says about riding a bicycle? Many of us have a sense that we have a “right” to ride our bicycles on the roadway, but where does that right come from? What limitations are there on that right? Can that right be taken away? Can cities pass their own bike laws? Can those be adopted? Where do those bike laws come from? What are the limitations on that right come from? What “right” to ride our bicycles on the roadway? Many of us have a sense that we have a “right” to ride our bicycles on the roadway, but where does that right come from? What limitations are there on that right? Can that right be taken away? Can cities pass their own bike laws? Can those be adopted? Where do those bike laws come from? What are the limitations on that right come from? What “right” to ride our bicycles on the roadway?

In Ohio, a bicycle is defined as a vehicle and is governed by the uniform set of Rules of the Road common to all vehicles along with a small set of bike-specific rules.

Why 12 Feet is Not Enough Space to Share

As bicycles tangled with pedestrians, horseback riders, carts and buggies, lawsuits ensued. There were no “Rules of the Road” at that point. Courts began to recognize cyclists as having rights on the roadways, particularly when those new-fangled motor vehicles started popping up! In 1895, the first book on bicycle law was published; it cataloged 100+ pages of bike cases that had already been decided. The courts overwhelmingly determined that a bicycle was a vehicle and that a person had the right to operate this vehicle on the roads. After this, they started defining basic concepts of right of way in determining liability issues. This judicial approach was eventually written to try to impose some order on the road. Early bicycle advocates used uniform set of Rules of the Road common to all vehicles along with a small set of bike-specific rules. The definition of what types of things are “bicycles” was recently revised to be broader in scope and incorporates most human-powered devices with two or more wheels. Here are a few provisions of the Ohio Revised Code for lawyers in bike cases to consider:

Bicycles are permitted to ride on every road in Ohio except freeways and limited access highways.1

§ 4511.55. Operating bicycles and motorcycles on roadway.

This is the key provision for bicycling on the road and will be the primary topic of this article. It is likely to come up in almost every bike case.

In Ohio, a bicycle is defined as a vehicle and is governed by the uniform set of Rules of the Road common to all vehicles along with a small set of bike-specific rules.

The (B) Section of 4511.55 establishes another key rule. You can ride bicycles with your buddy and ride side by side ["two abreast"] on just about every road in Ohio. There is no “single file” rule in the O.R.C. This becomes important when we start thinking about what “practicable” means. I’ve often argued that two cyclists, riding side by side, should be permitted to use the entire width of a lane. Accordingly, one cyclist should get a minimum of half the lane to use. In 2006, the Board of the Ohio Bicycle Federation took a long, hard look at the bike laws in Ohio and crafted a series of proposals into what we called “The Better Bicycling Bill.” We found a sponsor and shepherded the bill through the Ohio House and Senate getting it passed, unanimously, on the last legislative day of 2006. One major change in the bill was the addition of “The C Section” to O.R.C. 4511.55.

4511.55(C) establishes exceptions to the AFRAP rule. In doing so, it establishes some parameters for what is a “practicable” place in the lane to ride your bike. First, you do not have to ride AFRAP if it would be “unsafe or unreasonable” to do so. This gives the lawyer all sorts of wiggle room to establish facts to justify just about any lane position. The C Section also provides some examples of why the cyclist would not want to “ride to the right” including “fixed or moving objects, parked or moving vehicles, surface hazards.” The conditions faced by the cyclist can change foot by foot as you ride down the road. The law also allows you to ride away from the right when riding AFRAP would be “unsafe” or “impracticable.”

Finally, the C Section allows the cyclist to not ride to the right when the lane is “too narrow for the bicycle and an overtaking vehicle to safely ride side by side within the lane.” This covers just about every lane in every city in Ohio. A strong argument can be made that any lane under 15 feet is “too narrow” for a car or truck or bus or semi-tractor trailer to share side by side.

My friend Keri Cafferty is a graphic artist and a Florida cycling advocate. She helped found “I Am Traffic,” an organization which developed a training program called “Savvy Cycling” which teaches cyclists to ride in traffic. Keri’s graphic talents include creating scale visual aids to illustrate lane widths and riding position (left).

So what is a good, safe, reasonable and “practicable” lane position for a cyclist?

Many bicycling riding experts will testify that cyclists should never hug the white line. Rather, we should ride several feet to the left of the white line. This lane position makes the bicycle operator more “conspicuous” to motorists approaching from behind and those coming in the opposite direction. The idea is to penetrate the brains of motorists as early as possible. This gives the motorist the most amount of time to properly gauge the cyclist’s speed and location and develop a strategy for dealing with the cyclist.
A cyclist who “hugs the curb” unintentionally invites motorists to pass with unsafe clearance by sending a visual cue to motorists behind that there is a lot of space between the cyclist’s left elbow and the lane divider line. Riding a few feet to the left of the white “organ line” helps overtaking motorists realize that they must move over the lane divider, or center lane, to safely pass.

**Ohio BIKE LAWS**

Ohio cyclists are governed by all of the basic traffic laws. A cyclist can be ticketed for speeding, running a stop sign or stop light and even drunk cycling. Here’s a few more bike laws that you may encounter.

**IMPEDING TRAFFIC**

The “Slow Speed” law (ORC 4511.22) was originally used by aggressive police officers to chase cyclists off the road. This law prohibits one from “impeding traffic.” In 2000, I represented Steve Selz, a cyclist ticketed for “impeding traffic.” Steve was going 17 mph uphill from a standing start when he was ticketed. I utilized an expert witness to establish that Steve’s speed was a reasonable one for a cyclist. I argued to the Court that instead of a ticket, the officer should have given Steve a medal for going 17 mph uphill. Steve was convicted of impeding traffic and we appealed.

I argued that Steve was not “impeding traffic,” rather he was “traffic” as that term is defined in ORC 4513.01. The legislature has permitted many types of vehicles to use Ohio’s public roads – not just cars and trucks and busses. Many vehicles are incapable of going 35 to 55 mph; bicycles, farm equipment and Amish buggies are commonly found on the roads. I argued that the impeding traffic law could not be used to ban the use of lawful vehicles from the public way. The Second District agreed and reversed, holding that in an “impeding traffic” case, the nature of the vehicle and its physical capabilities have to be taken into account. This holding was incorporated into ORC 4517.22 in the 2006 “Better Bicycling Bill.”

**THE THREE FOOT LAW**

On March 21, 2017 Ohio became the 30th state to adopt an “X-Foot” law. Most are Three-Foot Laws, but Pennsylvania’s is four feet, North Carolina’s two and South Dakota law says three feet up to 35 mph and six feet at higher speeds. This law, seven years in the making in Ohio, requires motorists to allow a three-foot cushion when passing a bicyclist. We do not know how this will play out in future civil cases. I’m not aware of any tickets that have even been issued yet.

The map below was put together by the League of American Bicyclists.

**CROSSING THE DOUBLE YELLOW**

Another important change found in the Better Bicycling Bill was an amendment allowing motorists to cross the double yellow line to pass slower moving traffic. This is not “bike specific” as it applies to passing any vehicle. We designed it to apply to two-lane, 45 to 55 mph country roads which cyclists love. However, it also applies to passing an Amish buggy or slow moving farm equipment.

**ORC 4511.27**

Discusses the establishment of “hazardous zones”: the no-parking/double yellow line zones. The 2005 amendment allows one to cross the double yellow line to pass when:

- The slower vehicle is traveling half the posted speed (or less);
- The passing vehicle can complete the pass without speeding;
- There is sufficient sight distance to complete the pass safely.

**RIDING IN THE DARK**

Cyclists riding after sunset and before sunrise may underestimate the impact of darkness on their level of conspicuity. Almost half of all fatal crashes occur in the dark, but only a small percentage of all riding is done in the dark. Too often the cyclist does not have a light. Ohio law mandates that bicycle riding in the dark have front and rear lights that meet the statutory criteria.

**CONSULT LOCAL LISTINGS**

O.R.C. 4511.07 is another statute amended in 2006 by the Better Bicycling Bill. This provision allows a municipality to regulate bicycling within its borders. But, there are two very important provisions. First, consistency is required. Local laws governing riding a bicycle on the road may not be “fundamentally inconsistent” with state traffic law.

Second, O.R.C. 4511.07 mandates that no local law or ordinance may “prohibit the use of bicycles on any public street or highway” (except freeways).

Many cities have their own published riding provisions, mandatory single file riding ordinances and other provisions that are clearly “fundamentally inconsistent” with state bike laws.

These bad local laws can present obstacles for the cyclist’s counsel. In one case, my client was rear-ended and suffered a traumatic brain injury. The crash report blamed the cyclist because he was the “on the road” and not on an adjacent sidewalk, as required by the city’s “Safe Riding Regulations.” What can you do? I reached out to the law director for the city, pointed out the conflict and asked if this was the case they wanted to take to court on the issue of whether “home rule” allowed them mandate sidewalk riding. The city decided to change the crash report, and its local law, instead of fighting.

**ENJOY THE RIDE**

Cyclists tend to be very passionate about their bikes and their rights. This was true when George Clementson wrote the first book on Bike Law in 1895 and it is still true today. The lawyer involved in a “bike case” would be well served to keep this passion in mind when tackling bike law issues.
Described as America’s “national pastime,” the sport of professional baseball has sustained an unrelenting 100-year program to evade the American justice system.

Soon after federal enactment of the Sherman Anti-Trust Act in 1914, professional baseball launched a campaign to set itself apart from almost all domestic business enterprises. In the case of Federal Baseball v. National League, that campaign ultimately landed before the United States Supreme Court in 1922. Authorized by Justice Oliver Wendell Holmes, Jr., a unanimous Court held that professional baseball leagues and teams are exempt from federal anti-trust law.1 No other professional sport in the U.S. has secured anti-trust exemption.

Three years before the Supreme Court’s elevation of professional baseball to status as a uniquely situated business, a few star baseball players of the time demonstrated that human frailty could sully the shine of even our nation’s great game. Soon after the 1919 World Series, the Chicago press published unapologetic admissions by reputed mobsters that the Series had been “fixed.” Professional baseball’s embarrassment from the “Black Sox” scandal was exacerbated by a criminal trial that dominated national headlines. In 1921, the Cook County, Illinois District Attorney indicted and proceeded eight players on the 1919 roster of the Chicago White Sox. The indictment alleged that the charged players had accepted bribes from gamblers to “throw” the 1919 World Series, won by the decided underdog, the Cincinnati Reds. Although the jury found the indicted defendants “not guilty,” the American press and people cried “foul ball.” Professional baseball’s aversion to public trials in America’s justice system had firmly taken root.

To attempt to dispel the evolving view that professional baseball games had become something akin to our modern-day professional wrestling matches, professional baseball teams’ owners recruited the first Commissioner of Baseball in 1920: Kennesaw Mountain Landis, a sitting federal judge in Illinois. Judge Landis agreed to accept the appointment only if he was granted absolute power over every aspect of professional baseball. Ignoring defense verdicts in the Black Sox scandal trial, Judge Landis issued a lifetime ban of all eight of the indicted men from professional baseball.

Promptly after his appointment as Commissioner, Judge Landis oversaw the drafting and implementation of the original version of The Rules of Baseball. Effective January 12, 1921, The Rules of Baseball read as one might expect, considering the author — organized, numbered and written similar to federal court rules. The Rules of Baseball confer the Commissioner with the final word on any dispute involving leagues, teams and players in all of professional baseball. Judge Landis invoked the following process for the Commissioner to make “baseball justice”: “Proceedings before the Commissioner shall be conducted in general like judicial proceedings with due regard for all the principles of natural justice and fair play, but the Commissioner may proceed informally where he deems it desirable.”2 When the Commissioner of Baseball issues a ruling, parties have no right of appeal.3 The Rules of Baseball direct that the Commissioner apply the phrase “in the best interests of the national game of Baseball” as an ultimately dispositive guideline for all rulings.4

In a rarity for professional baseball, in January 1987, in a federal courtroom in Portland, Maine, a would-be buyer and a reluctant seller of franchise rights for a Triple-A professional baseball team contested their dispute over ownership of the franchise. The owners’ group for the Maine Guides baseball franchise sued not an individual, but the collective purchasers, an authority established by two collaborating Pennsylvania counties, but also the International League of Professional Baseball Clubs, Inc. The International League was the “home” league for the disputed franchise. And the International League was my client. I found myself as the trial lawyer for the League, smack in the middle of this case of first impression. The court held that a would-be seller’s group challenged a professional baseball league’s right to act pursuant to professional baseball’s internally established rules without judicial challenge. The trial consumed just six days of court time. Despite failed consummation of the sale of the franchise, could the League’s Board separately approve transfer of franchise rights and effect binding transfer of those franchise rights? The League insisted that the answer was “yes.”5 Both the trial court and the U.S. First Circuit Court of Appeals agreed that the International League had such powers, expressed in the League’s Constitution and By-Laws.6 Professional baseball’s internal procedural actions had trumped legal arguments for disposition of disputed private baseball-related business deals. To underscore this premise, upon conclusion of this franchise litigation, professional baseball leagues have amended their constitutions to provide that any dispute involving franchise rights would be decided by binding arbitration conducted by the affected league. By the operation of The Rules of Baseball, the Commissioner would serve as the final arbiter for franchise disputes.7 No more of this court stuff for professional baseball.

Five years later, designated as Minor League Baseball’s trial lawyer for another civil lawsuit, I again found myself in a federal courtroom. This time I traveled to Manhattan to defend the three Triple-A Professional Baseball Leagues, the American Association, the Pacific Coast League and the International League, in a gender discrimination employment case. On the eve of Pamela Postema’s eligibility for promotion to an umpire position in Major League Baseball, the Triple-A Professional Baseball leagues declined to renew her contract as an umpire. This act terminated her professional umpiring career. Ms. Postema was the first and, to date, the only female to have progressed to the doorstep of big-league umpiring. After spirited motions practice,8 the parties to the Postema case resolved the dispute on a confidential basis. Soon thereafter, the modality for resolution of umpires’ disputes with professional baseball was subsumed within the umpires’ agreement with professional baseball — now governed entirely by binding arbitration with the Commissioner as the final arbiter. No more of this court stuff for professional baseball.

Given professional baseball’s reaction and response to the franchise litigation in Maine and the Postema case in New York, it seems that I must have contributed to putting myself out of work as a trial lawyer for Minor League Baseball. No more of this court stuff for professional baseball.

For over a century, in management of its business dealings, professional baseball has successfully snubbed its nose at federal and state regulatory, statutory and common law. Professional baseball operates predicated on its own rules. Forget about this court stuff for professional baseball.

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5 Professional Baseball Rules Book, Major League Baseball Agreement, Art. I, Section 2(b) (1921-present).

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America’s Pastime’s Aversion to America’s Justice System

BY FRANK A. RAY

Guides baseball franchise sued not an individual, but the collective purchasers, an authority established by two collaborating Pennsylvania counties, but also the International League of Professional Baseball Clubs, Inc. The International League was the “home” league for the disputed franchise. And the International League was my client. I found myself as the trial lawyer for the League, smack in the middle of this case of first impression. The court held that a would-be seller’s group challenged a professional baseball league’s right to act pursuant to professional baseball’s internally established rules without judicial challenge. The trial consumed just six days of court time. Despite failed consummation of the sale of the franchise, could the League’s Board separately approve transfer of franchise rights and effect binding transfer of those franchise rights? The League insisted that the answer was “yes.” Both the trial court and the U.S. First Circuit Court of Appeals agreed that the International League had such powers, expressed in the League’s Constitution and By-Laws. Professional baseball’s internal procedural actions had trumped legal arguments for disposition of disputed private baseball-related business deals. To underscore this premise, upon conclusion of this franchise litigation, professional baseball leagues have amended their constitutions to provide that any dispute involving franchise rights would be decided by binding arbitration conducted by the affected league. By the operation of The Rules of Baseball, the Commissioner would serve as the final arbiter for franchise disputes. No more of this court stuff for professional baseball.

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5 Professional Baseball Rules Book, Major League Baseball Agreement, Art. I, Section 2(b) (1921-present).
Louis Katz, my late father, taught my sister and me to love baseball and to play it. He did this not because he had no sons, but because his love for the sport was so strong, he couldn’t imagine his children not understanding it deeply.

He told me he had been drafted for a farm team for the Reds, a younger cousin swore it was Pittsburgh. Either way, it was 1940, and he ended up first in the army and later teaching navigation for the air force in Texas. Somewhere in there, he damaged his back and lost his pitching speed, so that after World War II ended, he could only pitch for The Ohio State University, but was not fast enough for the big guys. And his back went out on him then, as well.

So, my sister and I grew up playing ball with the neighborhood guys and spending countless days in Crosley Field, cheering on the Cincinnati Reds. I came to love Crosley Field and only began to understand the tax implications of a municipal stadium after I became a lawyer.

Crosley Field, like almost all stadiums built before 1950, was constructed using private money. The few exceptions, like the LA Coliseum and Chicago’s Soldier Field, were constructed with funding of the taxpayers, as well as the hope of capturing the Olympics for their cities.

Another exception was Cleveland Municipal Stadium. In 1928, 59 percent of the voters passed a $2.5 million levy for a fireproof stadium on the Lakefront. It needed an additional $500,000 to be completed. It had 70,000 seats making it far larger than Crosley Field. At first, both stadiums were taxable property under Ohio law.

The question of how to treat a stadium owned by a municipality for tax purposes came to the Ohio Supreme Court in 1950 when Cleveland attempted to get a real property tax exemption for its municipally owned stadium. Under the Ohio Constitution and the law in place at the time, exemptions were limited to the following: "... public grounds of a city, ... houses or halls used exclusively for public purposes or erected by taxation for such purposes, notwithstanding that parts thereof may be lawfully leased ..." Thus, the question was whether the facility was used exclusively for a public purpose.

Under Ohio tax laws, the property tax goes to schools, local municipalities and towns. A basic principal of taxation is that when someone doesn’t pay, everyone else picks up the tab. In essence, the exemption is subsidizing the cost of the project or entity that no longer pays taxes. It’s almost like going to dinner with ten people and five say they don’t have their wallet after the meal has been eaten. The solution: either the other five cover their own cost as well as the cost of those without money or one carefully makes sure that each person gets his/her own check before dinner is ordered. This may be simply resolved for a dinner, but what if the question is how to pay for education of children, a system carrying water to homes, roads, a hospital or a stadium? Should we each pay individually for all governmental services we use, or should we have the projects paid for by the community and made available to all at the same, presumably affordable, cost?

If we decide that something like a school system to educate our children is so important that we need to allow all children to access it, whether or not they pay, then maybe we want to cover its cost using a tax or by issuing bonds, which may just delay the payment by the community depending upon how the bond issue is structured. And, we may want to exempt the resulting real property from state tax and the bonds from the federal and state tax to encourage their purchase.

When the whole community is paying for something, our children’s benefit is obvious. But the community is paying the cost. If the benefit is shared with the community, then the community should pay for it. This is the basic rationale for property taxation.

As to the Cleveland Municipal Stadium’s tax status, in City of Cleveland v. Ohio Board of Tax Appeals, 153 Ohio St. 97 (1950), the Supreme Court said “no” to the exemption. The Court affirmed the Board of Tax Appeals decision that the use of the stadium plus its parking lots was not a governmental use, but a proprietary, even though it had provided public benefit. In other words, it was rented out to a team and it made a profit. Justice Taft, in dissent, raised a question that would, in later cases, found to be the rule: why are public purposes of a proprietary nature not still public purposes. He argued that like public parks, stadiums provide enjoyment and relaxation for the general public, and, therefore, an exemption from real property taxation is warranted.

Within a few years of the Cleveland Municipal Stadium case, the Court concluded that a public purpose of a proprietary nature is still a public purpose within the meaning of the exemption statute. Essentially, the Court affirmed the ability of using public money for some private purposes under certain conditions.

Skip forward a few more years: a decision was made to replace Crosley Field with a newer stadium, something with boxes for entertainment and near downtown Cincinnati. This new stadium would be paid for by bonds, and Crosley Field would be torn down. My late father and I lamented our loss over a Graeter’s ice cream hot fudge sundae.

My father and I were not alone in our concern about the new stadium. A Cincinnati attorney, sought to enjoin expenditures of public funds on the proposed stadium, pointed to the sale of advertising space, the rental of the stadium and other issues that indicated to him the stadium would benefit a few wealthy people, not the general public.

He argued that those using the stadium wouldn’t be paying what it cost, and, as a result, the taxpayers would need to pick up the remaining cost. Chief Justice Taft and the majority in Bazell v. Cincinnati, 13 Ohio St.2d 63 (1968), denied the injunction. They concluded that a municipality could construct a stadium, rent the stadium to private persons who provide athletic and other exhibitions and make a profit from the event. The municipality could also derive a profit from land acquired to operate a parking lot, and construct and maintain a scoreboard and derive revenue from the sale of advertising on that board. Finally, Section 6 of Article VIII of the Constitution of Ohio did not prevent a county from raising money for or lending its credit to a city. The Court also argued that the case was not presented properly at the lower court.

Interest income from bonds can be exempt from both federal and state tax. This has been justified by the argument that it

Continued on page 34
Gayer, Drucker and Gold argued in their report that the federal government has subsidized newly constructed or majorly renovated professional sports stadiums with about $3.2 billion federal taxpayer dollars since 2000, but they estimated the resulting loss of revenue to the federal government is $3.7 billion. According to this study, the bond issues used to finance construction of Great American Ball Park and Paul Brown Stadium cost federal taxpayers $324 million.

And, across the US, stadium construction continues to be funded by public dollars through bonds and property tax exemptions. Most recently, the Oakland Raiders’ move to Las Vegas was described as “a record breaking subsidy”: $1.9 billion cost involving a $350 per resident tax, plus an increase on the hotel tax.

Thus, while a real property tax exemption in Ohio means those not exempt from tax in the municipality need to pay more to cover the cost of schools or other local governmental functions, the issuance of federally tax exempt bonds to the Cincinnati and Cleveland stadiums means that someone in say, Alaska, may have to pay more tax to cover the services of the federal government.

We have come a long way from the time when my late father and I sat at Crosley Field watching the Cincinnati Reds. But, the question we never knew to ask back then remains: as far as the funding of stadiums and the tax exemptions granted them, have we gone in the best direction for our municipalities and for Ohio?

Continued from page 33

would be unconstitutional for one level of government to levy taxes on the securities of another level of government, a view later rejected by the US Supreme Court.

So, Crosley Field was torn down and its home plate flown by helicopter to the new stadium, the construction of which was funded by bonds.

In 1995, the Bengals threatened to move if a new stadium just for their use was not constructed. And, after a 1996 ballot issue, the allegedly very modern, up-to-date Riverfront Stadium, also known as Cinergy Field, still owing about $28 million in bond debt, was replaced by two new stadiums, one for football and the other for baseball. Public bonds paid for 96 percent of the Paul Brown Stadium and the Great American Ball Park.

But, the public didn’t flood Cincinnati, bringing kazillions of dollars of new tax revenue after these stadiums started operating. The alleged promise boom in sales tax collection didn’t happen, the debt on the bonds had to be paid, so the property tax rollback promised in the ballot, had, itself, to be rolled back. By 2011, finances were so desperate that Drake Hospital, valued by some at $45 million, was sold to UC Health for $15 million, enough to cover one year of the operating. The alleged promise boom in sales tax collection never happened, the debt on the bonds had to be paid, so the property tax rollback promised in the ballots, had itself, to be rolled back. By 2011, finances were so desperate that Drake Hospital, valued by some at $45 million, was sold to UC Health for $15 million, enough to cover one year of the bond debt owed on the bonds. In 2012, the Brown Stadium was renovated for an additional $43 million and in 2014, it got a new scoreboard for a mere $7 million dollars. Bloomberg reported in 2013 that Hamilton County had to grapple with a debt of $43 million plus that year, including debt service.

Controversies over constructing stadiums has not been limited to Cincinnati. The Gateway Sports and Entertainment Complex in Cleveland has had its own issues, although allegedly not as bad as those in Cincinnati. Richard Jacobs, owner, conceded 52 percent of the construction cost towards Progressive Field and Quicken Loans Arena, which were jointly constructed in 1994. CLEVELAND TOMORROW, an organization comprised of top executives from Cleveland’s 50 largest companies, created a development fund to help launch the project. In May 1990, county voters passed a 15-year sin tax on alcohol and cigarettes to help finance the complex. The Q is currently looking at an $88 million renovation, to be funded in good part by bonds and in other part from revenue earned through admissions.

FirstEnergy Stadium replaced the Cleveland Stadium, torn down in 1996 after Art Model moved the football team and changed the Browns to the Baltimore Ravens. Three-fourths of the cost of the new stadium was covered by the issuance of bonds.

As to the status of these facilities for purposes of real property taxation, Ohio Revised Code 5709.081, first passed in 2002 and amended in 2006 and in 2011, grants an exemption for real and tangible personal property owned by a political subdivision that is a public recreational facility for athletic events and meets a list of other criteria. One of the criteria is that the facility is in whole or in part by public obligations as defined in Ohio Revised Code 5709.76. Essentially, bonds are the income produced, which is exempted from state and local tax.

In September 2016, The Brookings Institute issued a booklet, Tax Exempt Municipal Bonds and the Financing of Professional Sports Stadiums, by Ted Gayer, Austin Drucker and Alexander Gold. After examining the funding for professional sports stadiums, they concluded that what they called “an inefficient subsidy” for local sports stadiums be reduced or eliminated. The authors argue that funding public infrastructure development with bonds the private sector fails to provide, or where the social benefits exceeds social costs, are privately unprofitable. But, they found no discernible possible relationship between sports facility construction and local economic development, income growth or job creation.

1 Section 5356, General Code
2 Philade Home Fund v. Bd of Tax Appeals, 5 Ohio St.3d 136 is one of the many cases in which this very basic statement is made.
3 The holding in this case, disputed by the dissent, indicated that the people needed to determine the exemption from taxation. Presumably, those who voted to pay for the stadium with bonds would also have to approve the exemption of the property from taxation.
4 Taft became Chief Justice in 1962. At the time of this case, he was Justice.
5 Tracing the Ohio tax exemption cases throughout their entire history shows that there are many trends, sometimes broadening and sometimes narrowing the application of the exemption to real property. There are plenty of examples that can serve as useful precedent for any argument made, either for tax or not to tax. However, the recent trend both by the courts and by the General Assembly has been toward expanding the availability of the exemption to Ohio real property tax.
6 In the Exemption from Taxation, 164 Ohio St. 603 (1956).
7 See a more recent case, The City of Cincinnati v. Testa, 143 Ohio St. 3d 271 (2015). The Court held exempt from taxation a golf course owned by a municipality but managed by a private for-profit entity even though it’s tax free existence put it at a competitive disadvantage. The Court based its decision on how the agreement between city and for-profit was structured, who had ultimate control and how profits were handled.
8 Bazell v. Cincinnati, 13 Ohio St.2d 124 (1960).
9 Point of information -- I have owned tax free muni bonds for many years.
11 i Section 5356, General Code
12 Philade Home Fund v. Bd of Tax Appeals, 5 Ohio St.3d 136
13 iii See a more recent case, The City of Cincinnati v. Testa, 143 Ohio St. 3d 271 (2015).
14 viii Bazell v. Cincinnati, 13 Ohio St.2d 124 (1960).
15 viix Point of information -- I have owned tax free muni bonds for many years.
16 viii Bazell v. Cincinnati, 13 Ohio St.2d 124 (1960).
17 State article by Henry Grabar http://www.slate.com/blogs/moneybox/2017/03/27/las_vegas_lures_the_oakland_raiders_with_a_record_breaking_taxpayer_subsidy.html

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Major League Sports, Major Contracts

Contracts in the major league professional sports setting – not unlike other industries – encompass a variety of subject matters: personnel and employment, real estate and property, delivery of goods and/or services, revenue generation, supply chains and governance.

For the Columbus Blue Jackets, those areas translate to an underlying contract for, respectively: players, coaches, scouts and management; the sale of and operation of Nationwide Arena; sub-contracting with a variety of third-parties, such as our concessionaire and in-arena WiFi provider; partnering with other companies for sponsorship and premium seating; affiliating with the Cleveland Monsters for minor-league player development; and operating under the bylaws, regulations and Collective Bargaining Agreement of the National Hockey League and its players’ association.

Quickly, I must dismiss the first and most common question I get asked: no, I do not draft the player contracts. Most find it remarkable that the NHL’s

"Morals clauses are an important mechanism for an employer to protect its reputation (and, connectedly, its bottom-line) from the unbecoming conduct of an employee.

Standard Player Contract is predominantly boilerplate, allowing for minimal negotiation outside the scope of years and dollars. In fact, a player may be signed by agreeing solely to the necessary terms of annual salary and term length.

Even the additional, permissive terms for negotiation are limited: bonus thresholds, promotional appearance obligations and restrictions to the team’s right to trade or otherwise move the player. That’s As a club fortunate to have two J.D.s in our Hockey Operations Department, we trust them to negotiate and draft these contracts without the Legal Department’s involvement.

While we do not work on the player contracts, we do negotiate and draft the contracts for the other employees in hockey operations, and those employees for our minor-league affiliate, the Cleveland Monsters: management, coaches, scouts, trainers and equipment, strength and conditioning personnel. Being the single employer for both the Blue Jackets and Monsters’ hockey staff is essential for developing our extended hockey roster at the direction and supervision of our management team.

These contracts contain the basics of an employment contract: term length, salary and bonuses, description of duties, procedure for work-related expenses and standard legal boilerplate. Then, our contract includes provisions due to the public nature of the entertainment industry: conduct that would allow for termination for cause (often referred to as a “morals” or “behavior” clause) and granting likeness use for publicity purposes. Lastly, the contracts have some hockey-specific terms: contingencies with responsibilities and pay in the event of a labor-related work stoppage, being subject to NHL bylaws and league-mandated disciplinary actions, and confidentiality for matters such as pre-draft scouting reports.

Two specific employment contract principles are somewhat unique to the sports, or entertainment, industry: the growth and prevalence of morals clauses and instances where negotiation leverage lessens following the public announcement of a hiring.

Morals Clauses

Morals clauses are an important mechanism for an employer to protect its reputation (and, connectedly, its bottom-line) from the unbecoming conduct of an employee. For most employers, this may only matter, if at all, for a senior executive or someone whose poor conduct could be associated by the public with the operations of the organization.

In the entertainment industry, the faces of organizations become the actors and actresses of Hollywood movies or the star player or head coach of a sports team. With the attention thrust upon these individuals as celebrities, and the nature in which news can instantly become viral through social and traditional media, the organizations are inextricably linked to the public reputation of those individuals.

Accordingly, conduct by those individuals – both good and bad – may directly influence the perception of the organization, and that public perception can then influence buying decisions. So, what happens if one of these individuals does something bad, e.g. domestic or sexual assault, DUI or other non-criminal conduct that could negatively impact the team’s reputation?

Beyond the initial response of ensuring everyone in the situation is safe, that there is cooperation with law enforcement, etc., the time comes – either immediately or after being strategically patient to allow the public perception to become apparent – for the organization to consider whether the conduct crosses the threshold of the morals clause and, if so, whether to enforce the clause.

Leverage with a publicly-announced hiring

Unlike the NHL player contracts, our non-player employee contracts are drafted in-house, and therefore, conceivably, every provision is subject to negotiation. But the amount of leverage for both sides changes dramatically if the hiring is announced to the public prior to negotiating the actual contract language.

In a non-public industry, or if the hiring simply has not yet been announced publicly, each side would have far more leverage with its demands. But is either side willing to unwind a deal once it has been announced to the entire hockey world? Usually not. Of course, each side does retain the nuclear option, if it considers the term at issue paramount, but in most cases, the leverage of threatening to cancel the deal is virtually non-existent.

Instead, the best leverage available for both sides is merely pleading generally for reasonableness and fairness or invoking a sort of hockey-industry standard. The hockey world is a relatively small circle, and everyone talks: coaches to other coaches, scouts to scouts, agents to agents and, yes, teams to teams. It is not uncommon to use any sort of comparable scenario as a means of garnering leverage.

It is quite common for an agent to contend that “such and such’ team(s) do(es) it this way.” As a response, we then attempt to confirm with the team(s) and consider if the team(s) was/were in a situation that would warrant differentiating our circumstance. Throughout the process, we consult with the Hockey Ops. department, and ultimately, jointly come to whatever decision is best for the team moving forward.

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Anyone who engages in sports, recreationally or professionally, should know they can sustain a wide panoply of injuries. Perhaps the most feared, serious and sometimes deadly injury, is suffering a concussion.

How is a concussion defined today? In essence, a concussion is a traumatic brain injury (“TBI”) and in the United States, one occurs every 15 seconds. More specifically, a concussion is a complex pathophysiological process affecting the brain, typically caused by either a direct blow to the head or an indirect blow to the body, e.g. whiplash. One very common situation is the brain rapidly moving from one side (contre) to the other (contrecoup) inside the rapidly moving from one side (contre) to the other (contrecoup) inside the rapidly moving from one side (contre) to the other (contrecoup) inside the rapidly moving from one side (contre) to the other (contrecoup) inside the brain and bodies of those under 26 years old are still developing.

The common causes of concussions from sports are football (highest for men), ice hockey, lacrosse, soccer (highest for women), and wrestling. Interestingly, women suffer more concussions than men; scientists don’t know why. Because scientists know that the brains and bodies of those under 26 years old are still developing, concussions for those in this age range are more dangerous. And if any sports enthusiast sustains another concussion before the first one resolves, this additional impact substantially increases the risk of long-term damage. Notably, the sports that cause concussions in children ages 5 to 18 are bicycling, football, basketball, playground activities and soccer. The Weill Cornell Medicine Brain & Spine Center has an excellent card with multiple symptoms, as well as the deleterious effects on loved ones. Fourth, delays are costly as this disorder is not easy to diagnose, whether someone denies the injury or does not treat it immediately, or because with these typically functional injuries, brain damage is not seen or found on regular X-Rays and other usual scans. Fortunately, science has advanced brain imaging technology. Tests such as the fNCI (functional neurocognitive imaging), which use six cognitive views to look at over 60 brain regions, can now “see” brain damage.

Concussions are expensive. To begin, 10 to 12 percent of ER visits involve concussions. Second, there are significant treatment costs. Third, consider the intangible costs when a sports participant has not been functionally normal, not being able to work, worrying about and dealing with multiple symptoms, as well as the deleterious effects on loved ones. Fourth, delays are costly as this disorder is not easy to diagnose, whether someone denies the injury or does not treat it immediately, or because with these typically functional injuries, brain damage is not seen or found on regular X-Rays and other usual scans. Fortunately, science has advanced brain imaging technology. Tests such as the fNCI (functional neurocognitive imaging), which use six cognitive views to look at over 60 brain regions, can now “see” brain damage.

There is still medical debate on how to treat concussions. As experts study our complex brains and become more sophisticated, mainstream medical thinking has moved away from the typical rest and do nothing strategy. Ultimately, when one engages in any sport, protecting one’s head, i.e. one’s brain, should be the highest priority. Enjoy sports in a practical, safe way by wearing a helmet for those sports that typically use one. If you or someone you know exhibits concussion symptoms, get to the emergency room or see the primary physician – do not let denial be the response. If symptoms do not go away fairly quickly, consult with a concussion clinic expert or neurologist. Be proactive. No one takes better care of you than you, so always advocate for your own health, and specifically, do all you can to protect your brain.
Liable for a Swim

By Jeffrey Eyerman

With the onset of sunshine and warmer weather — or, in central Ohio, the onset of warm weather, then a freeze warning, then warm weather again — parents and children are doubtlessly looking forward to a dip in the local swimming pool. Almost everyone knows that private “backyard” pool owners should take safety precautions to prevent accidents on their property, but what’s the liability of cities or towns for pools they own and operate? The answer, as with any legal question, is: it depends.

Subject to some key exceptions, Ohio law provides statutory immunity for “political subdivisions” for injuries caused by acts or omissions in connection with a “governmental function.” While the statute sets out many governmental functions — everything from garbage collection to operating a “rope course or climbing wall” — the provision we’re concerned with involves the “design, construction, reconstruction, renovation, repair, maintenance, and operation” of “a bath, swimming pool, pond, water park, wading pool, wave pool, water slide, or other type of aquatic facility.”

There’s a good reason that list of facilities is so comprehensive. Although Ohio courts typically define verbs like “operate” with a broad brush (more comprehensive. Although Ohio courts typically define verbs like “operate” with a broad brush (more

exact words in the statute. Thus, when a child died in a city-operated “wave pool,” Ohio’s Supreme Court ultimately found the city not to be immune from liability because, at the time of the child’s death, the statute provided immunity only for a political subdivision’s “swimming pool or pond.” And in a somewhat ironic twist, Chief Justice Moyer’s dissent notes that the law that first classified swimming pools as immune “governmental” functions took effect just three days before the tragic event. The court found that the wave generator “materially transformed the pool from a placid body of water, commonly known as a swimming pool, to a potentially hazardous body of churning water.”

This made a wave pool “more akin to an amusement ride,” operation of which was not expressly defined in the statute as a government function. The General Assembly took the court’s cue and amended the statute to include any “water park, wading pool, wave pool, water slide, and other type of aquatic facility.”

So, as a general pronouncement, if you’re somewhere playing in water, and the city operates it, you can expect the city to be immune from a lawsuit if something happens. But what does “operating” such a facility entail?

Even though giving those lessons does not involve running and maintaining the whole facility. They have also found cities to be “operators” even when the facilities are shut down — in a Franklin County case, the city was immune from damages sustained by a participant at a private, “lifeguards-only” after-hours use of a local aquatics facility. Even though the event was closed to the public.

The courts have made it clear that, absent some statutory exception, the sovereign immunity law is broad enough to give cities and towns a blanket immunity from prosecution. It only stands to reason, then, that the exceptions are where things really get complicated.

R.C. 2744.02(B)(4) provides that political subdivisions “are liable for injury, death, or loss to person or property that is caused by the negligence of their employees and that occurs within or on the grounds of, and is due to physical defects within or on the grounds of, buildings that are used in connection with the performance of a governmental function.” This exception (which, naturally, is itself subject to additional exceptions that space concerns prevent us from analyzing) is a commonsense one — even given the broad immunity afforded the state, its employees should still be held liable if they shirk their responsibilities in keeping the property safe.

In M.H. v. Cuyahoga Falls, a child was injured at the city’s indoor swimming pool because (as plaintiffs alleged), the city was negligent in the maintenance of the diving board and pool area. The city pled immunity, and the trial court agreed, but the court of appeals reversed on the grounds that improper maintenance of the facility could potentially open the city up to immunity under the “physical

Continued on page 42
from the earlier case) has ongoing relevance. Because "the operation of a pool is a government function" and the injury occurred in a building "used in connection with" that government function, the Supreme Court held that the statutory exception may apply, and remanded the case to the trial court.

Most of us are probably familiar with the ubiquitous signs posted on the perimeter of hotel and motel pools, advising that you "swim at your own risk." (As my first-year torts professor used to say to such warnings, "well, we'll see.") But, whether you know it or not, the rule is essentially the same for the well-patrolled public pool in your neighborhood. Be safe this summer, and, if you can't be safe, at least be mindful of the limitations on liability you may be facing if an injury occurs.

When I approached the Executive Director and the Publications Coordinator of the CBA about writing a regular feature on the "Reflections of a Retired Judge," they encouraged the idea. And, although there are a number of topics I intend to reflect on down the road, I owe a debt on this particular topic, and therefore will write about it first: the judicial selection and election process.

Why this topic? Is the system broken? Well, not yet, but like a great many other people, I feel the process is going downhill as the years progress. In recent years, we have seen on an increasing scale, the politicization of judicial offices. Confirmation hearings on nominations to the United States Supreme Court, which once were almost routine, have increasingly become battlegrounds of partisanship. The cloture rule, which in relation to the judicial confirmation process has been dubbed the "nuclear option," was triggered in 2013 for district and circuit judge nominations, and the injury occurred in a building "used in connection with" that government function, the Supreme Court held that the statutory exception may apply, and remanded the case to the trial court.

The M.H. court rejected this distinction. Considering that the statute defines the operation of a swimming pool as a governmental function—in other words, "government business"—Justice Pfeifer, ever the master of understatement, was "not persuaded that (the language from the earlier case) has ongoing relevance." Because "the operation of a pool is a government function" and the injury occurred in a building "used in connection with" that governmental function, the Supreme Court held that the statutory exception may apply, and remanded the case to the trial court.

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### Life Outside the Law

#### Reflections of a Retired Judge

**BY HON. PATRICK SHEERAN**

When I approached the Executive Director and the Publications Coordinator of the CBA about writing a regular feature on the "Reflections of a Retired Judge," they encouraged the idea. And, although there are a number of topics I intend to reflect on down the road, I owe a debt on this particular topic, and therefore will write about it first: the judicial selection and election process.

Why this topic? Is the system broken? Well, not yet, but like a great many other people, I feel the process is going downhill as the years progress. In recent years, we have seen on an increasing scale, the politicization of judicial offices. Confirmation hearings on nominations to the United States Supreme Court, which once were almost routine, have increasingly become battlegrounds of partisanship. The cloture rule, which in relation to the judicial confirmation process has been dubbed the "nuclear option," was triggered in 2013 for district and circuit judge confirmation hearings, and was triggered again this year during the confirmation hearings of Neil Gorsuch. Campaign spending for state Supreme Court races
While that may be true in situations where time is not a factor, I believe the courts are making a significant mistake in removing accountability for campaign statements made by judicial candidates. Last year, for example, in what I am sure is a local “first,” an out of state lobbying organization sent out a mailer accusing a judicial candidate, who was also the incumbent, of demanding sexual acts in return for providing a lesser sentence in a case. The claims, although presented quite luridly, were completely untrue. The candidate who ostensibly benefited from this mailer insisted he had nothing to do with it. While the disclaimer is relevant to the personal character of that candidate, it is not relevant to the larger issue: where are our judicial campaigns headed, with accountability for virtual defamation having essentially evaporated?

Nowhere good, I’m afraid. I am a firm believer in the law of economics: “bad currency drives out the good.” It applies to people as well as money. I have a law of economics: “bad currency drives out the good.” It applies to people as well as money. I have numerous examples, but that is beyond the scope of this article. For the moment, though, one silver lining as to why there aren’t more “congressional style” flyers in judicial races is a lack of money. From personal experience, most judicial candidates in local contested races have a difficult time raising money. As a candidate, I often made references to Lazarus, longing, in effect, for even the monetary scraps falling from the tables of, say, a senatorial or presidential fundraiser. Those folks raise more money in a day than most local judicial candidates raise in an entire election. Every local judicial candidate I know, in both parties, has had a fundraiser where the attendance could be measured in the low single digits. It was both humbling and disheartening.

But, with more money – and judges now being permitted to directly ask groups of people for money – the likelihood of more and more vitriolic campaign flyers and ads increases. I don’t mean to suggest that the incumbents will fire the first shot. Like in 2016, the shots will be fired at them. And, like the evaporation of the ‘rules of gentlemanly warfare’ after the Civil War started, the practice will become more and more general, especially if it works. This, coupled with a sincere, but ultimately wrong, request that party affiliation be listed alongside judicial candidates’ names, increasingly raises the specter of judicial campaigns becoming more and more like congressional ones: full of distortions, lies, misstatements and animosity. It has been well stated by Chief Justice Roberts that judges are categorically different from persons holding other political positions. Why is this not recognized and respected? Judges have an entirely different function than do legislators or executive officers. Even so, the law has clearly changed, and it will definitely affect future elections.

The second problem is that the law has clearly changed, and it will definitely affect future elections. Judges have an entirely different function than do legislators or executive officers. Even so, the law has clearly changed, and it will definitely affect future elections. The second problem is that judges are categorically different from persons holding other political positions. Why is this not recognized and respected? Judges have an entirely different function than do legislators or executive officers. Even so, the law has clearly changed, and it will definitely affect future elections. The second problem is that judges are categorically different from persons holding other political positions. Why is this not recognized and respected? Judges have an entirely different function than do legislators or executive officers. Even so, the law has clearly changed, and it will definitely affect future elections.
We always ask ourselves why we do it. Adventure, comradery, fellowship, the call of the wild and stories to tell at future campfires are common answers. Or, maybe it’s Zen.

We hiked 500 miles and carried everything but the kitchen sink — and it only took 30 years to do it. But we’re proud of our persistence. And we’re far from done, even though a couple of us have reached our mid-70s.

You might say that at this rate, we could do the Appalachian Trail (AT) in about 150 years. But that has never been our goal: to travel in a somewhat straight line from Georgia to Maine. We are more like butterflies, jumping from place to place (13 national parks and wilderness areas) usually along the southern part of the famous pathway. We have been on and off the AT many times, but customarily it’s just a part of a loop.

My brother, Greg, of Raleigh, N.C., and I celebrated our 30th annual backpacking trip this year, following the usual practice of meeting up with other fellow hikers at a campground with parking places and amenities on a Wednesday night before heading out the next morning to pound the trails and camp in the wild for about three and a half days.

This year’s adventure, which wasn’t as far away as normal, took us to the Red River Gorge about 60 miles southeast of Lexington, Kentucky, in the Daniel Boone National Forest. We had been there a couple of times over the years to do day-hiking on weekends in the Fall. But we never picked it for backpacking trips because we thought the trails were too short for our excursions that sometimes totaled 25 to 30 miles — that’s not a problem now. We’d put a couple vehicles at the other end of a 10-mile stretch and that would be just fine.

The Red River Gorge and adjacent Clifty Wilderness are described in promotional literature as “a rugged area characterized by miles of high cliffs, steep valleys, numerous sandstone arches (more than any place east of the Rocky Mountains), rock shelters and boulder-strewn creeks...cliffs tower 200 feet above the mature hemlocks, hardwoods and rhododendron thickets...the unusual geology has created an environment for abundant wildlife and more than 750 flowering plants.”

In addition to hiking and camping, the area is popular for rock climbing, cave rappelling, Red River zip lines, kayaking, canoeing or touring the Natural Bridge State Park with its lodge and sky lift. Natural Bridge is a sandstone arch that formed thousands of years ago from winds and the weathering process. Suspended across a mountainside, the arch is 78 feet long, 65 feet high, 12 feet thick and 20 feet wide.

Our group this year consisted of Greg and his friend Jim Deloatch from Asheville; my sons-in-law John Boley and Kenny Mullins; my grandson Lincoln Mullins and his friend, Skye Payne, who found his way up from northern Georgia; and my cousin, Stan Jones, and the rest of his contingent from St. Louis, Nick Riggio, Dave Reilly and Tim Tucker.

The first day was almost perfect except for the sign at the trailhead, “Warning: Venomous snakes are active in this area.” We did a leisurely three miles with moderate elevation changes to a nice flat place where we pitched our tents alongside a babbling brook.

The next morning also went well until we took the wrong turn at a fork and climbed nearly 600 feet to the top of a rocky ridge — at least it was great scenery at that point. After our “tour guides” studied a map for a while, Greg uttered his customary “good news, bad news” summation. “The bad news is that we’ve been going the wrong way for two or three miles. The good news is that it’s all downhill back to where we got off track.”

Continued on page 48
We ended up hiking almost ten miles in that single day, crossing the Red River on a suspension bridge hours later than we had expected and experiencing deepening fatigue, sore and aching muscles and pains in the back, toes and other body parts. We ascended the rising trail beyond the river, but passed nothing that would serve as a campsite until we finally found some small flat spots along the top of a ridge. The nearest water source was a 10-minute walk down the other side of the mountain and consisted of steady drips off the side of a cliff creating small puddles below.

Greg has a degree in logistics and has kept detailed logs on all of our trips, which we started calling “death marches” during our early years when we usually went to the Smoky Mountains. This year’s anniversary prompted Greg to research his own records. He found that 41 people from eight different states have participated in the hikes, ten of them only once. The tradition started with three of us. Our late brother-in-law, David Shooter, earned the nickname “Alpha Dog” while hiking in the first 18 years until cancer stopped him in 2006. Jim, who originally got Greg involved, has been on 17 hikes and Kenny has joined us for 16. Lincoln first carried a backpack at age 7 and immediately declared he’d never do another – he has now completed 11. Stan, 75 years old, began in 1991 at the Cumberland Gap and now has 24 hikes. Greg’s son, Nick, presently has a baby at home, but has been on 11 hikes, starting in 1996 when he was 10 years old. My son, Alex, who couldn’t make it this year, has 8, along with John. Greg, John and I have actually done an additional trip, because we celebrated our 10th anniversary in 1997 by adding a late summer, 75-mile hike on the Isle Royale that sits in Lake Superior about 50 miles north of the Upper Peninsula.

I told fellow packers that hiking is difficult in my 70s, but I remember my 40s and it was hard then, too. At least the equipment is much better now: our rain gear used to be plastic trash bags, and then heavy ponchos. Now, we have lightweight jackets and pants. Stoves, stools and water filters have gotten smaller, lighter and more efficient.

We always ask ourselves why we do it. Adventure, comradery, fellowship, the call of the wild and stories to tell at future campfires are common answers. Or, maybe it’s Zen. Jenny Ison, an owner of the Cliffview Resort and publisher of Cliff View Notes, wrote that “the best Zen-like state you can attain without visiting an ancient guru is simply a walk in the natural world. A walk in the Red River Gorge. In just a few minutes, you’ll be taking slower, deeper breaths. That signals your parasympathetic nervous system to slow your heart rate and lower blood pressure. This reaction to a change in body rhythms helps clear the mind and allows the body to relax.”

Yeah, there’s that; until an ascending trail causes the heart to pound like it’s going to break through the breastbone. So, I consider the whole thing to be an annual physical – it’s pass/fail.

Hon. David E. Cain
Franklin County Court of Common Pleas
David_Cain@fccourts.org
Tony Roseboro is a man of many talents and interests. In addition to being a Columbus Assistant City Attorney, he is a father, church trustee, actor, model, playwright, producer, motorcyclist, philanthropist, sports coach, golfer and trombonist.

Tony started performing at an early age. When he was just 6 years old, his educator parents enrolled him in Columbus Junior Theater of the Arts’ productions. Soon after, he took up trombone, performing in school jazz and concert bands. While attending East High School, Tony was involved in varsity baseball, golf and “In the Know” championship teams, while also playing in the Columbus Symphony’s Wind Ensemble. He occasionally plays his trombone, but admits for the most part that it usually sits in the family room looking at him.

Tony has an adult son, who is a minister, and daughter, who is a graphic designer. He is a trustee in the Second Baptist Church and has served on the boards of the Center Stage Theater, Jazz Arts Group, King Arts Complex and CATCO. He is also a charter member of the Columbus Buffalo Soldiers Motorcycle Club, which, in addition to their destination rides, focuses on charitable fundraising for high school students’ scholarships, clothing and therapeutic programs.

After graduating from Wittenberg University and then OSU law school (1985), he practiced with Otto Beatty’s law firm before joining the City Attorney’s office, Real Estate division.

One day in 1992, Tony interviewed at CAM Talent Agency for modeling jobs. During the meeting, the agent took a phone call and then turned to him, asking if he had a briefcase and a suit. He replied of course he did, he was an attorney! He was hired on the spot for his first print ad. Since then, he has continued modeling in numerous print ads and acting in commercials and industrial films.

In 1995, Tony was hired to work in a play at CATCO, which earned him the right to his first Equity card. He has directed plays, including a play he co-wrote about child abuse called “Cry The Children.”

Four years ago, he and three friends formed PAST Productions Columbus. They produce three plays each year, by local and national playwrights, and he generally has an acting role in each production.

When asked how he remembers the lines for each play, he says he starts with the first page, reading the lines out loud. Once he has memorized page one, he moves on to the next page, and so forth. He thanks his family for tolerating him when he practices his lines in the shower or basement.

Tony loves his involvement with the theater, in all capacities, and says he plans to continue acting so long as he can walk across the floorboards and remember his lines.
Civil Jury Trials
Franklin County Common Pleas Court
BY MONICA L. WALLER

Verdict: $1,260,000.00, Federal Employer’s Liability Act Claim Act.

Plaintiff Richard Dean Price worked as an assistant foreman for CSX Transportation, Inc. repairing and replacing portions of railroad tracks. Georgia Lowe, the supervisor, required him to use a hydraulic hammer that weighed approximately 70 pounds. Mr. Price transported the hammer in the back of his truck in an upright position to minimize the lifting required to access it. He had been securing it with bungee cords until CSX banned their use; CSX approved ratchet straps but failed to provide them. On January 18, 2012 the hydraulic hammer had become wedged among some tool bins in the back of Mr. Price’s truck. While trying to dislodge it, Mr. Price injured his shoulder. He did not report the injury to anyone at the time, but went to the emergency room later that night due to pain. He reported the injury the following day. Mr. Price was ultimately diagnosed with a torn rotator cuff that had to be surgically repaired. He was catheterized during surgery and suffered complications from the catheterization that caused scar tissue. He was later diagnosed with Peyronie’s Disease, a condition of erectile dysfunction that he claimed was permanent and debilitating. Mr. Price sued CSX under the Federal Employer’s Liability Act (FELA) claiming that his shoulder injury and the surgical complications were caused by CSX’s failure to provide him with a reasonably safe workplace and equipment. CSX argued that it was not responsible for Mr. Price’s injuries because none of the equipment provided for him malfunctioned and he had full discretion to organize his tools as needed. CSX also argued that Mr. Price’s shoulder injury was pre-existing and his Peyronie’s Disease was not the result of his catheterization. Medical Specials: No information available. Lost Wages: $78,453 in past lost wages, $127,555 in future lost wages and $48,540 in future lost benefits. Last Settlement Offer: $104,000.00. Length of Trial: seven days. Plaintiff’s Counsel: James A. Ebert, vocational rehabilitation specialist. Defendant’s Experts: George W. Cyphers, M.Ed., LPC, CRC, primary care physician; Timothy Duffey, M.D., orthopedic surgeon; Gregory Lowe, M.D., urologist; Fred E. Johnson, Ph.D., J.D., economist; George W. Cyphers, M.D., LPC, CBDS, vocational rehabilitation specialist. Defendant’s Experts: Michael W. Weiss, M.D., primary care physician; Kathleen Deken, CRC, vocational rehabilitation specialist. Plaintiff’s Counsel: James A. Ebert, Atlanta. Defendant’s Counsel: Melissa Foster Bird, Huntington. Case Caption: Richard Dean Price v. CSX Transportation, Inc. Case No. 13 CV 10442 (2016).

Verdict: $537,412.93.

Defendant Olugbenga Tolani, M.D. was Plaintiff Linda Lemley’s primary care physician. In early 2011, Ms. Lemley told Dr. Tolani that she noticed a mass in her rectum. Dr. Tolani examined her and referred her to a gastroenterologist, Defendant Laurence Entsuah, M.D. In February of 2011, Dr. Entsuah performed a colonoscopy and biopsy. He asked Ms. Lemley to follow up with his office after the colonoscopy. However, the biopsy results were negative. They also found that Ms. Lemley was negligent in not contacting Dr. Entsuah after the biopsy results. He also should have recognized the high probability of a false negative biopsy result given the nature of the mass and should have referred her to a colorectal surgeon or recommended further testing. According to Ms. Lemley’s experts, she had Stage II cancer at the time of the biopsy and had a 64 percent chance of survival. When the mass was diagnosed 7 months later, she had Stage IIB cancer and a 43 percent chance of survival. Her chance of survival dropped to 15 percent in 2014 upon discovery of the metastasis. Her experts also testified that she required a permanent colostomy bag. Dr. Entsuah argued that it was Ms. Lemley’s responsibility to contact his office to discuss her test results. If she had done that, he would have recommended additional follow up. Defense experts testified that Ms. Lemley actually had Stage IIB cancer at the time of the biopsy in March 2011 and that her cancer remained at that stage until it was diagnosed in October 2011. The jury concluded that Dr. Entsuah was negligent in not contacting Ms. Lemley after the biopsy results. They also found that Ms. Lemley was negligent for not following Dr. Entsuah’s instructions to contact the office after the colonoscopy. They found that Dr. Tolani was not negligent. They attributed 75 percent responsibility to Dr. Entsuah and 25 percent responsibility to Ms. Lemley. There were no significant settlement discussions. Specials: No information available. Length of Trial: six days. Plaintiff’s Experts: Megan L. DeHaan, M.D., radiation oncology; Stephen Goldstone, M.D., general surgery. Defendant Entsuah’s Experts: Lowell B. Anthony, M.D., medical oncology; Stephen Martin, M.D., gastroenterologist. Defendant Tolani’s Experts: Mark Arnold, M.D., colorectal surgeon; Trent Sickles, M.D., family medicine. Plaintiff’s Counsel: David Shroyer. Defendant Entsuah’s Counsel: Mark Schumacher. Defendant Tolani’s Counsel: Fred Sowards. Judge William Woods. Case Caption: Linda Lemley v. Laurence K. Entsuah, M.D., et al. Case No. 13 CV 4390 (2016).

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Verdict: $6,885.83.

(56,476.39 in economic damages and $5,000.00 in non-economic damages. Total of $11,476.39 reduced by 40 percent for comparative negligence.)

Automobile-Pedestrian Accident.

Plaintiff James Forti was employed at a retail store at Easton Town Center. While heading out to get lunch on October 9, 2012, Mr. Forti walked through a parking lot and across an access road. Defendant Elizabeth Heydman was driving out of the parking lot and struck Mr. Forti as she made a left turn onto the access road. Mr. Forti saw Ms. Heydman’s vehicle before he was struck but thought that Ms. Heydman would have seen him and would stop. Ms. Heydman argued that she did not see Mr. Forti before she crossed into the roadway because he was walking in the grass along the shrubs and was partially concealed. Mr. Forti suffered injuries to his back and thumb. He was treated by EMS personnel at the scene and transported to the hospital where he was diagnosed with abrasions, lacerations and a hematoma on his lower back.

Continued on page 54

**Verdict: $3,102.84.**

($2,602.84 in economic loss and $500.00 in non-economic loss.)

**Automobile Accident.**

On March 29, 2012, Plaintiff Dawn Werner was waiting in a drive through at a local bank. Her vehicle was in park and she was using her cell phone to send a text. Defendant Tera Robinson was behind her in line and struck Ms. Werner’s vehicle, causing her to strike Ms. Werner’s vehicle on the left side. Ms. Werner’s vehicle struck the curb, bounced back and spun around. She suffered injuries to her right wrist and back and an exacerbation of the injuries to her neck, elbows and upper back. However, she did not seek additional medical care until May 24, 2012 when she went to the ER with complaints of severe neck pain, low back pain and numbness and tingling in her hands and fingers. Imaging studies revealed disk protrusions at several levels within the cervical spine, flattening of the spinal cord and an aneurysal tear. She was diagnosed with cervical impingement, disk osteophytosis complex and facet arthropathy. She began treating with a physiatrist who sent her to physical therapy and then referred her to a neurosurgeon. She was referred to a neurosurgeon ultimately performed a disceotomy. Plaintiff claimed that the cervical strain and impingement and upper back strain were caused by the March 29, 2012 accident and aggrivated by the April 26, 2012 accident. She claimed that her pre-existing degenerative disk disease was asymptomatic until the accidents and that the accidents lead to the need for surgery. Plaintiff settled with the driver of the vehicle in the April 26, 2012 accident for $40,000 and proceeded to trial against Ms. Robinson only. Ms. Robinson denied negligence but claimed that Ms. Werner was not injured in the March 29, 2012 accident and that her symptoms and treatment were related to her pre-existing degenerative condition and the aggravation caused by the more serious second accident. Ms. Robinson asserted that Plaintiff was entitled to no more than the $2,602.84 ER bill. The parties agreed to a damages cap of $100,000 in exchange for a stipulation on service of process. Medical Specials: $87,749.69. Lost Wages: None. Last Settlement Demand: $96,500.00. Last Settlement Offer: $3,000.00. Plaintiff’s Expert: Gregory Z. Mavros, M.D. (neurosurgeon). Defendant’s Expert: Martin Gottesman, D.O., orthopedic surgeon. Length of Trial: two days. Plaintiff’s Counsel: Richard D. Brown. Defendant’s Counsel: Bryan H. Lauer. Magistrate Mark Petrucci. Case Caption: Dawn M. Werner v. Tera N. Robinson, et al., Case No. 14 CV 3120 (2016).

**Defense Verdict.**

**Automobile Accident.**

On November 1, 2015, Plaintiff Wys Lovely for her and her passengers Destiny Hawkins and Natsuhia Britton were traveling through the intersection of Joyce Avenue and Denune Avenue in Columbus when their vehicle was struck broadside by a vehicle driven by Defendant Donna Monroe-West. Plaintiffs claimed that Ms. Monroe-West was responsible for the collision because she was speeding and failed to stop at a stop sign before proceeding into the intersection. Ms. Monroe-West denied responsibility for the accident. She claimed that she stopped at the stop sign and that Plaintiff Destiny Hawkins had ample time to see her entering the intersection and failed to take evasive action to avoid the collision. All three plaintiffs claimed neck and back injuries. Natsuhia Britton also claimed that she suffered a seizure as a result of the accident. Damages were stipulated at mediation at $9,500 for Destiny Hawkins, $10,500 for Destiny Hawkins and $23,000 for Natsuhia Britton. The case proceeded to trial on liability only. Length of Trial: two days. No experts. Plaintiff’s Counsel: Jeffrey A. Pallante. Counsel for Plaintiffs Wendy Hawkins and Destiny Hawkins: George A. Lyons. Defendant’s Counsel: Scott Norman. Judge David C. Young. Case Caption: Natsuhia Britton, et al. v. Donna Monroe-West, et al. Case No. 14 CV 010769 (2016).

**Defense Verdict.**

**Product Liability.**

On April 27, 2014, Plaintiff Manav Manawalia and his sister went to the Kroger store at 29009 Central Plaza Drive to exchange two propane tanks that they intended to use for a cookout later that day. After they exchanged the tanks, Mr. Manawalia and his sister did some shopping and drove home. During the trip, approximately 30 minutes that Mr. Manawalia was in the car with the propane tanks, he noticed an unpleasant odor. He also experienced a headache and felt dizzy and lightheaded. He did not open the car windows. When he got home and began unloading the tanks, he heard a whistling sound and traced it to what he believed was a hole near an abrasion on the surface of the tank. Mr. Manawalia called 911. He drove the car into the garage and instructed him to bring the tanks back to the store. Without attempting to cover the hole in the tank, Mr. Manawalia drove back to the Kroger store and returned the tanks. He was given a full refund and two free replacement tanks. Mr. Manawalia claimed that he had headaches for the next several days that caused him to miss work for two or three days and to leave early for several more days. He continued to have intermittent headaches for the next several months. However, Mr. Manawalia did not seek medical attention. He also claimed that the incident left him with a fear of explosions from leaking gas that rendered him unable to get in a car with a propane tank or buy a propane tank. His vehicle also retained the smell of propane, which required two professional cleanings. Mr. Manawalia’s damages included $6,000 in lost wages, $150 in over-the-counter medications for his headaches and $335 in the cost to clean the vehicle. Mr. Manawalia sued Kroger Co. and Ferrellgas L.P. d/b/a Blue Rhino under theories of product liability, negligence and breach of warranty. The distributor, North Star Exchange, answered the claims against Ferrellgas.

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Franklin County Common Pleas Court


Defense Verdict. **Automobile Accident.**

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**Defense Verdict.**

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On April 27, 2014, Plaintiff Manav Manawalia and his sister went to the Kroger store at 29009 Central Plaza Drive to exchange two propane tanks that they intended to use for a cookout later that day. After they exchanged the tanks, Mr. Manawalia and his sister did some shopping and drove home. During the trip, approximately 30 minutes that Mr. Manawalia was in the car with the propane tanks, he noticed an unpleasant odor. He also experienced a headache and felt dizzy and lightheaded. He did not open the car windows. When he got home and began unloading the tanks, he heard a whistling sound and traced it to what he believed was a hole near an abrasion on the surface of the tank. Mr. Manawalia called 911. He drove the car into the garage and instructed him to bring the tanks back to the store. Without attempting to cover the hole in the tank, Mr. Manawalia drove back to the Kroger store and returned the tanks. He was given a full refund and two free replacement tanks. Mr. Manawalia claimed that he had headaches for the next several days that caused him to miss work for two or three days and to leave early for several more days. He continued to have intermittent headaches for the next several months. However, Mr. Manawalia did not seek medical attention. He also claimed that the incident left him with a fear of explosions from leaking gas that rendered him unable to get in a car with a propane tank or buy a propane tank. His vehicle also retained the smell of propane, which required two professional cleanings. Mr. Manawalia’s damages included $6,000 in lost wages, $150 in over-the-counter medications for his headaches and $335 in the cost to clean the vehicle. Mr. Manawalia sued Kroger Co. and Ferrellgas L.P. d/b/a Blue Rhino under theories of product liability, negligence and breach of warranty. The distributor, North Star Exchange, answered the claims against Ferrellgas.
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