In this issue, Columbus Bar Lawyers Quarterly goes in-depth to examine civil rights: what they are, how they've historically changed in central Ohio, and what we can expect to see in 2017.
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Changing the Tides
Requires a Push from Attorneys

BY BRIGID E. HEID

Our nation seems more divided than ever, and following a contentious national election, some fear that we are no longer committed to our founders’ guiding principle that “all men are created equal.”

As a nation, we are at a crossroads in our battle for civil rights and achieving equal justice for all. Even in this uncertain time, let’s not lose sight of what we have achieved in the last 100 years alone:

- Granting women the right to vote with the ratification of the 19th Amendment (1920)
- The Civil Rights Act became law (1964)
- The Americans with Disabilities Act was enacted (1990)
- The Supreme Court held that same-sex couples had a constitutional right to marry in Obergefell v. Hodges (2015)

Lawyers were at the heart of each and every one of these civil rights milestones, and our role will be every bit as important for achievements yet to come. Lawyers are uniquely situated to use our legal training to work for the betterment of society, the advancement of civil rights and achieving equal justice for all. The words of Martin Luther King Jr. are a poignant reminder that we must speak up if we hope to maintain and protect our civil liberties. As he once said, “Our lives begin to end the day we become silent about things that matter.”

The CBA is committed to promoting diversity and inclusion for our members and enhancing the legal profession. Our current leadership, 60 percent male and 40 percent female, is representative of the attorney population in Franklin County, 61 percent male and 39 percent female. Further, even though the proverbial glass ceiling has not yet been broken for the highest elected office in the land, at the CBA it has been shattered! In 1996, the first female president, Sandy Anderson, was installed and she was quickly followed by seven more women over the ensuing 20 years. During that same 20-year timeframe, members elected two African-American presidents – one male, one female – and the ninth woman president will be installed next year. It’s a remarkable turnaround given that the first 123 presidents of the CBA were all white males.

Another laudable achievement in the push for equality is the CBA’s effort to promote the number of attorneys of color in our legal community. In addition to other initiatives at the association, the Managing Partners’ Diversity Initiative is entering its 16th year with a renewed focus on growing the pipeline for attorneys of color. This comes in recognition that the pool of law school graduates is shrinking nationally, and there has been a profound decrease in the number of minorities entering our profession.

I am disheartened, but not defeated, to hear many of the same conversations as when I first started practicing law in 1990. Undoubtedly, the conversations were even more disheartening for my mother who graduated in 1954 as one of only two women in her law school class at OSU. While women have represented about 50 percent of law school graduates for the past 20 years, we still make up only 18 percent of partners in private practice. In central Ohio, women in the legal profession “enjoy” the worst gender pay gap of any other group, a staggering 59 percent – worse than the construction industry at 67 percent and worse than health care at 68 percent. Gender equality is clearly not unique to the legal practice and according to a recent report from McKinsey & Co. and LeanIn.org, it will take more than 100 years for women to achieve parity at the C-Suite level.

As lawyers, we are uniquely qualified and uniquely positioned to promote civil rights and promote equality for all. I for one intend to speak up, to continue our efforts at the CBA and to encourage my colleagues to do the same.
The average commercial building wastes 30 percent of its energy,1 and in a country flooded with commercial properties, there’s an increased need for energy efficient office buildings.

Average energy costs are expected to increase for the foreseeable future,2 and in this climate, attorneys with legal strategies to reduce energy bills will be able to provide greater value to their clients.

Securing financing for energy efficiency projects through traditional lending markets can be difficult, even if the upgrades add value to the building for current and future owners. In many cases, the required payback periods for major energy upgrades are frequently viewed as too long for such projects to “cost out.” Obtaining bank financing for efficiency projects can be difficult because of the loan characteristics, such as:

• The loan term is normally three to seven years if the lender cannot secure its loan through a mortgage.
• Interest rates are typically higher for equipment-type loans.
• Short loan terms create cash flow negative projects.
• Bank loans typically have floating interest rates pushing interest rate risk on the project.

It can take a collaborative effort to secure funding for energy projects, but there are options for businesses that are able to identify the right opportunities. Alternative funding options come in many forms, including tax credits and deductions, rebates, low-interest loans, grants, bond programs, sales and property tax exemptions and green building incentives. Clients can call in attorneys to negotiate better deals for all of these options – having knowledge of other possibilities can save significant amounts of time, energy and money for legal counsel and their clients.

More Funding Choices

Attorneys interested in finding the best financing options for their clients should start by learning about the Energy Special Improvement District (E-SID) and Property Assessed Clean Energy (PACE) programs. PACE programs finance eligible energy efficiency and renewable energy improvement projects through special assessments on a property that are paid through its real estate tax bill. The special assessments are used to secure financing issued to fund the improvements without requiring the borrower or the sponsoring local government to pledge its credit. Uniquely, PACE programs can provide 100 percent financing for a qualifying project.

E-SIDs need to be created for property owners to utilize PACE to finance improvements for existing non-residential buildings. There are many benefits to PACE financing, including:

• A loan term up to the useful life of the energy improvements, not to exceed 30 years.
• Owners can spread the repayment costs over the life of the energy improvements, which increases savings.
• The loan is tied to the property rather than the borrower, meaning it does not count as debt to the property owner.
• Financing can be cash flow positive, i.e. energy savings exceed financing payments.
• Projects are seen as an operating expense and often times require no down payments.

Attorneys with legal strategies to reduce energy bills will be able to provide greater value to their clients.

Another Major Benefit

Businesses in Columbus have already taken advantage of this opportunity. In 2016, PNC Plaza was the first project to initiate the E-SID, when the company was looking to implement several efficiency updates at its headquarters in downtown Columbus. PNC identified $3.3 million in upgrades to the roof, lighting, air controls and water supply to its East Broad Street building and is now looking at savings of energy costs around $187,000 per year. With a traditional bank loan, a focus on the eventual green savings and the long-term aggressive financing at fixed rates might not have been possible.

Collaborating for Better Results

Attorneys can help clients access PACE financing by working with the Columbus-Franklin County Finance Authority, a public agency designed to facilitate capital investments by the private, non-profit and public sectors in central Ohio. The agency is an eligible issuer of tax-exempt and taxable debt and can leverage PACE in concert with their Columbus Region Energy Fund.

As with the PNC project, the Finance Authority continues to keep open doors to central Ohio businesses looking to make energy efficiency improvements. It’s vital that legal advisors understand the various financing options available to a client while looking to make a major energy upgrade. Better yet, presenting the opportunity to a client showcases a partnership mindset, keeping their best interests in mind both economically and environmentally.

Eligible energy improvements include:

• Lighting
• HVAC
• Energy management systems
• Solar
• Waste energy recovery
• Roofing upgrades
• Insulation
• Geothermal
• Others

The Finance Authority works with attorneys and their clients to review financial and environmental documents while building and energy audits are conducted. The information gathered during this process is used to structure an energy savings plan that will eventually pay for the efficiency upgrades, installation, transactions and financing costs.

2 Short-Term Energy Outlook, U.S. Energy Information Administration, May 2014
Looking ahead, legal immigration and employment-based immigration could get a radical makeover. President-elect Trump will soon work towards reshaping our nation’s immigration policies through administrative appointments, the regulatory processes, executive action, agency policy decisions and memoranda, and by working with a Republican Congress to make changes to the law.

Much like the rest of the world, U.S. employers are struggling to understand the impact of a Trump presidency on their businesses. Employers who value immigrant labor are rightfully concerned. We are reminded of some of President-elect Trump’s former pronouncements on immigration, and while some of his earlier statements have been “dialed back,” his having once issued these statements provides us a window to look into the future of a Trump administration. This look into the future is being further clarified when one also considers the men and women who Trump has chosen to seek counsel on immigration-related matters. After reviewing many of the statements and “plans” made during and since the campaign by Trump and his advisors, one can begin to formulate an idea of some of the possible, even likely, changes that are to come.

First, it is important to understand that some of Trump’s proposed changes to our immigration system, such as dismantling, changing or curtailing certain visa programs like H-1B or L-1, building a wall or making E-Verify mandatory for all employers, requires legislative action. The Immigration and Nationality Act is statutory in nature and to effect meaningful change to our immigration system through changes in law will require the Trump administration and anti-immigration Republicans to work with pro-business Republicans and Democrats in a Congress that is narrowly held by a Republican majority in both houses. Democrats may very well filibuster bills in the Senate they find objectionable. Therefore, one should not expect any immediate changes to the laws which are extant.

Irrespective of the above, when Mr. Trump goes to Washington, we can expect a number of substantive changes to employment-based immigration. Here is a list of some changes that a president could do without the help of Congress:

**Rescind various executive orders.** Trump has promised to eliminate President Obama’s Deferred Action for Early Childhood Arrivals program, which provides a basis for certain undocumented immigrants who came to the United States as children to remain in the country and obtain work and travel authorization. There are approximately 745,000 undocumented immigrants who are enrolled in the original DACA program. If DACA is eliminated, the impact will be substantial and create havoc among longtime undocumented residents who have grown up in the U.S., many of whom are currently completing their education, working in businesses and enlisted in all four branches of the U.S. military. Employers should monitor this situation going forward.

**Withdraw or renegotiate NAFTA.** The treaty provides that the President may withdraw by providing a six-month notice to the treaty parties (Mexico and Canada). The president-elect has promised to withdraw the U.S. from NAFTA, which not only facilitates free trade with Canada and Mexico, but also allows certain professionals who are citizens of Canada and Mexico to obtain TN status for employment in the U.S. A U.S. exit from NAFTA would, among other things, bring an end to TN status for the tens of thousands of professionals in the U.S. It is likely that the Trump administration will soften its stance now the election is over and prefer to renegotiate as opposed to withdraw from NAFTA, but this remains to be seen.

**Suspend or delay immigration from certain regions, also known as “extreme vetting”.** Trump and his advisors, while no longer calling for a ban of all Muslims, continue to call for more screening and “extreme vetting” for all Muslims. It is likely that visa processing may slow, especially for applicants from certain countries. In 2015, there were approximately 7,000 H-1Bs granted for beneficiaries from Muslim countries. Additionally, people wanting to use different visa programs, such as B-1, E-1/2 or L-1, would likely experience delays that would make business objectives difficult to achieve.

**Suspend or revoke proposed or recently finalized regulations.** The new administration could instruct departments to cease or suspend all rule-making activity. Therefore, some recently proposed rules could be scrapped. The Trump administration will likely turn to rule-making in its attempts to fulfill its promises to protect U.S. workers. For example, USCIS has recently issued a final rule that increased filing fees for the first time in 6 years. One can imagine a Trump administration increasing government fees sharply in an effort curtail immigration.

**Increased worksite enforcement.** While employers nationwide have experienced less compliance enforcement activity since 2012, one should anticipate increased inspections of Form I-9s (Employment Eligibility Verifications) and post-petition approval site-inspections going forward. In support of this effort, Trump intends to increase Immigration and Customs Enforcement agents by 300 percent.

A renewed emphasis on the “culture of no” that has permeated the immigration-related agencies. USCIS rewards denials and states that the agency’s officers and adjudicators will not be disciplined nor would increased worksite enforcement be dropped. In support of this effort, Trump intends to increase Immigration and Customs Enforcement agents by 300 percent.

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their careers be jeopardized by denying a petition or an application for a benefit. However, a mistaken approval of a benefit for an employer or an employee may land that adjudicator into serious trouble. As such, the agency values denials over approvals. This culture of no has resulted in the ever-increasing issuance by USCIS of unnecessary, costly and over-burdensome requests for additional evidence and notices of intention to deny or to revoke already approved employment-based petitions. USCIS continues to issue internal instructions to its people in the form of policy memorandums and regulations that insist on ever-higher evidentiary burdens imposed on employers. The incoming Director of USCIS could also rescind previously issued policy memoranda that are employer-friendly.

One should anticipate changes to the H-1B visa program. The incoming administration will likely push to make the visas more difficult and more expensive to obtain. Some ideas offered include arbitrarily increasing the prevailing wage required to be paid to an H-1B beneficiary or requiring the U.S. employer to prove that no U.S. worker is available for the job by testing the labor market. Either one of these changes to the H-1B program will have a profound impact on U.S. employers, primarily technology companies that rely on highly skilled H-1B workers who fill a void in the marketplace.

There will also be a move to have E-Verify implemented as a mandatory requirement for all U.S. employers. While this requirement may have bi-partisan support in Congress, employers are going to feel the additional administrative burden of using the E-Verify system if they are not already doing so.

One cannot know for certain what changes a Trump Administration brings with it, but one can be assured that we are likely to see fewer opportunities at increased costs for employers and employees using employment-based immigration to create a stronger, healthier and more diverse economy. Thus far, nothing promised or proposed by President-elect Trump grows the economy, nor makes the U.S. more an attractive place for foreign investment. Hopefully, he uses his business acumen to lead an honest effort at immigration reform that is in the nation’s best interests.

2 ibid.
5 Social Determinants of Health are the conditions in which people are born, grow, live, work and age, including factors such as socioeconomic status, education, the physical environment, employment, social support networks and access to health care. “Beyond Health Care: The Role of Social Determinants in Promoting Health and Health Equity,” Kaiser Family Foundation, http://kff.org/essentials-policy/issue-brief/beyond-health-care-the-role-of-social-determinants-in-promoting-health-and-health-equity/ November 4, 2015.

Practice Tips
From a Law Clerk’s Perspective

BY ALEXA E. CRAIG

One should anticipate changes to the H-1B visa program. The incoming administration will likely push to make the visas more difficult and more expensive to obtain.

Last year, I was fortunate to participate in a federal judicial clerkship with the Honorable Danny C. Reeves on the United States District Court for the Eastern District of Kentucky. As I transition into private practice, I appreciate the invaluable experience and insight that I gained from clerking – and now I’m passing that insight along.

First, honesty and candor will go far with the court – which includes disclosing and discussing unfavorable case law. Not only do clerks review the cases cited by the parties, they also conduct their own research to ensure the court’s decision is properly supported by the law. Facing legal challenges head-on is always preferable to ignoring or otherwise mischaracterizing unfavorable authority. Maintaining your credibility should always be the highest priority.

Second, although this might seem obvious, focus your briefs on mandatory authority from the Supreme Court and the circuit in which you’re practicing before addressing persuasive authority from other circuits or lower courts. Exhausting controlling case law helps minimize the chance a judge will face reversal when ruling in your favor. Out-of-circuit citations are certainly helpful, but they are far more advantageous if the attorney can demonstrate that the other circuit follows a similar approach to the relevant circuit.

Third, adhere to deadlines. Federal courts set deadlines far in advance and plan their schedules carefully, resulting in an unfavorable view of motions for extensions filed on the eve of a deadline. Anticipate the need for extensions and request them as far in advance as possible.

Fourth, remember the importance of treating everyone in the federal courthouse with respect – not just the judge. While knowing a judge’s courtroom decorum rules is important, so is being courteous to the courthouse staff. If ever in doubt about how to interact, err on the side of formality.

My final piece of practical advice is to make sure you understand the applicable Federal Rules of Civil Procedure for seeking reconsideration or other relief from an order or judgment. Meritless motions seeking reconsideration hurt the parties’ credibility and waste the court’s very limited resources.

For those interested in clerking, I have the following advice. Be sure to cast a wide net and to be willing to clerk in an unfamiliar location. After all, the clerkship will last only a year in most cases, and if you have the flexibility to move around, a year flies by! Also, do not underestimate the need to be personable. Judges and clerks share a very small space and do not receive a lot of outside contact – except in the courtroom – so the judge you are seeking out will need to trust that you can fit in well with the rest of his or her staff.

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Gender Identity Issues in the Law: A Look Back at 2016

The rights of American’s transgender population have garnered significant attention in large part due to the media attention surrounding North Carolina’s “bathroom bill” and progressive corporate policies from popular U.S. retailer Target. 1

In March 2016, North Carolina passed a law applicable to public schools and government agencies requiring people to use public bathrooms and changing facilities that correspond with the sex on their birth certificates. It also prohibited local governments in the state from passing non-discrimination legislation. Opposing such restrictions, in April 2016, Target issued a policy allowing transgender employees and customers to use restrooms corresponding with their gender identity. 2

Although much of the recent focus on gender identity issues has involved the use of public bathrooms, transgender legal issues implicate many of the same federal and state laws prohibiting certain conduct towards members of protected classes, including discrimination, retaliation and harassment in varying areas including adverse employment actions, harassment in employment or schools, access to facilities, dress codes and health insurance coverage. So what exactly does the law say with respect to gender identity issues?

Federal Protections

Federal anti-discrimination statutes do not explicitly list gender identity; nonetheless, the Obama Administration issued an Executive Order protecting employees of federal contractors from discrimination based on gender identity and sexual orientation. Numerous federal agencies have taken the position that the term “sex” in anti-discrimination statutes includes gender identity and/or expression and sexual orientation. And now, the Supreme Court of the United States will decide a case regarding whether courts should defer to the Department of Education’s 2015 opinion letter’s interpretation of sex to include gender identity and whether the interpretation should be given effect. This case can have implications for multiple agencies’ interpretations.

Following up to the 2015 opinion letter, in May 2016 the Departments of Education and Justice issued a joint guidance explaining the obligations for schools receiving federal Title IX funding. The Departments of Education and Justice consider a student’s gender identity protected under the prohibition against sex discrimination. Thus, under this guidance, students must be permitted to use restrooms and locker rooms corresponding to their gender identity, called by the pronoun of their choice and provided a safe and non-discriminatory environment. 3

Also in May 2016, the EEOC issued guidance regarding bathroom access for transgender employees, concluding it is sex discrimination to deny an employee equal access to a restroom corresponding with the employee’s gender identity. The guidance also stated transgender employees cannot be forced to use single-user restrooms in lieu of available single-sex restrooms. However, an employer can make a single-user restroom available to all employees who choose to use it.

This guidance echoed the Occupational Safety and Health Administration’s 2015 best practices, which provides transgender employees with access to restrooms that correspond to their gender identity. OSHA recognized that bathroom access is a health and safety matter for transgender employees.

Likewise, the U.S. Department of Health and Human Services issued a final rule providing protections on the basis of gender identity under the Affordable Care Act in May 2016. What connection could gender identity issues have with the Affordable Care Act you ask? Transgender employees are filing suit against employers and their insurance companies seeking reimbursements and coverage for the cost of upcoming sex reassignment surgeries. One such example was here in Ohio. In September 2016, an employee in Cincinnati diagnosed with gender dysphoria filed suit alleging violations of Title VII, the Affordable Care Act and the Constitution, because sex reconstructive surgery was not covered by her insurance. As of Oct. 28, 2016, the case is pending.

State and Local Protections

Similar to federal law, Ohio’s anti-discrimination statute does not specifically protect gender identity. Nonetheless, local governments have begun passing ordinances that specifically protect gender identity. Columbus city ordinances prohibit employers with four or more employees from discriminating based on gender identity or expression. The ordinances also prohibit discrimination in housing and public accommodations.

A number of other large cities in Ohio have done the same. Cincinnati’s ordinances protect transgender individuals. Cleveland’s ordinances protect gender identity and expression. Cleveland passed an ordinance in July 2016 specifically allowing individuals to use restrooms, showers or locker rooms consistent with their gender identity. Similar ordinances protecting gender identity or expression have been passed in Akron, Athens, Bexley, Bowling Green, Dayton and Toledo.

Transgender legal issues implicate many of the same federal and state laws prohibiting certain conduct towards members of protected classes.

1 The U.S. Equal Employment Opportunity Commission (“EEOC”) explains that transgender individuals are people whose gender identities and/or expressions are different from the sex assigned to them at birth. A transgender woman generally is someone who was assigned the male sex at birth, but who identifies as female. Transitioning is a different process for every individual. A person does not need to undergo any medical procedure to be considered a transgender man or a transgender woman.

2 A federal judge in Texas issued a nationwide preliminary injunction, in effect as of October 28, 2016, against the Departments of Education and Justice’s enforcement of the guidance. This injunction may have implications regarding other federal agencies’ enforcement of non-discrimination statutes to cover gender identity or expression.
New Judge Training
Surviving and Thriving During My First Year on the Bench

BY HON. CHRISTOPHER M. BROWN

So here I am – it’s 3 a.m. and I’m changing my newborn daughter’s diaper. She’s three weeks old and does three things: eat, sleep, and fill her diaper. In that hazy moment of parental joy, it dawns on me that I’m probably one of the few elected judges who worry about diapers, feeding schedules and pre-kindergarten day care. After all, “Judge Reece isn’t changing diapers at this ungodly hour,” I think to myself.

I was born on July 23, 1980. On July 2, 2015, I began a six-year term as a Franklin County Common Pleas Court Judge. At age 35, I became the youngest elected judges in the state of Ohio. Growing up on the south side of Columbus, it is an honor and a privilege for me to serve on the Common Pleas bench, 10 blocks from where I grew up. I feel the enormity of my responsibilities every day. As an assistant prosecutor and criminal defense attorney, I served only a handful of interested parties or clients. Now I serve everyone in Franklin County.

Being a judge at my age, however, presents unique challenges that other judges may not face, challenges both professional and personal. For example, during jury selection, I have to reassure the pool of jurors that I am, in fact, old enough to be a judge. The Supreme Court’s New Judge Training was a lonely experience, as I was 10 to 15 years younger than the other elected judges throughout the state. One time, in the court’s garage elevator, a confused visiting judge asked if I was a staff attorney or a bailiff, implying that I was obviously too young to belong on the judge’s elevator. I am probably the only judge to show up for work in a pair of jeans and Chuck Taylor All-Stars – black, naturally – before changing into a suit.

I knew upon taking the bench I would face questions about my qualifications because of my youth. My last name, my lack of civil experience and my devotion to handling civil matters were all concerns that I wanted to address. In my first 15 months, I believe I’ve performed well, and the numbers speak for themselves. On my first day in office, Courtroom 6F had 669 pending cases, third most in the Common Pleas Court. As of September 2016, we have 570, the second fewest open cases. Over 90 percent of cases, those cases pending past the Ohio Supreme Court guidelines, have dropped from 17 percent to 11 percent of our docket.

Managing the criminal docket is the most difficult of my duties as judge. Although criminal cases comprise one-third of our caseload, they command 75 percent of the Court’s attention, due to the Constitutional rights implicated in each and every case. Sentencing, in particular, is the most time-consuming aspect of this role. A person’s liberty and freedoms are in my hands. Deciding who can be rehabilitated and who needs to be removed from society can keep one up at night. It’s common for me to read a pre-sentence report and vacillate back and forth between probation and prison. Furthermore, addressing the effects of the explosive opioid and heroin crisis is a constant concern. Many crimes are committed simply to feed the addiction, and I have worked with the probation department and the other judges to find ways to overcome this epidemic.

Courtroom 6F averages about one trial per month. I have found that criminal cases go to trial more frequently, confirming what my judicial colleagues told me before I started. I have, however, presided over a number of civil trials as well.

While running for this office, I pledged to issue decisions on dispositive motions within 60 days of briefing. On my first day, the list of pending motions was 11 pages long. Now it is two. I believe I’ve kept my promise to decide motions without undue delay, a few weeks of patience leave notwithstanding.

I am proud of these accomplishments, but I have had plenty of help along the way. My fellow judges have been an invaluable resource. Members of the Common Pleas bench have warmly welcomed me among their ranks. I was concerned that my age would trouble my colleagues or that they would not respect my thoughts and opinions. That concern couldn’t be further from the truth. Judges McIntosh, Frye, Schneider and Serrott have been especially open to meeting with me to discuss cases and rulings and to straighten me out if I lose sight of the ultimate issue at hand.

I am also fortunate to share my chambers with Magistrate Thompson. Mike’s knowledge of civil procedure and substantive law is as broad as it is deep. He is always willing to share his knowledge and experience with my staff attorney and me. The only downside to Mike’s experience is that he’s so well respected by our local bar that he often is referred cases for jury trial.

I’ve also found the civil bar very helpful and accommodating during my first year as judge. I took the bench with practically zero civil experience, so I rely on the attorneys to educate me about the law as it relates to their case. I know enough to know what I don’t know, and the civil bar has been helpful in breaking down what the cases are about and what is being asked of the Court. Speaking of the civil docket, it has been a pleasure to get to know our civil bar. As a criminal attorney, I heard second and third-hand horror stories about fighting and general nastiness from civil attorneys. I am happy to report those rumors and scuttlebutt are unfounded. Our civil litigation bar has treated opposing counsel and the Court with the respect and decorum this profession demands.

I’ve tried to create an open and friendly atmosphere in Courtroom 6F. The parties and attorneys deserve a courtroom that is responsive and readily available, and my staff is an essential part of that. Jane Hayes, my bailiff, is always available to schedule hearings and handle whatever unforeseen matters may come up. Chris Shook, my staff attorney, has extensive civil litigation experience. From the start, I asked him to educate me about civil procedure and substantive law, and he has performed miracles in making me competent to handle those matters.

I truly have the best job in the world, and I have worked hard to make myself a well-rounded jurist. When I started in July 2015, I was intimidated by the backlog of cases and of learning the civil docket on-the-job. I feel, after my first year and with the help of my staff and fellow judges, I am a capable, competent and accessible judge. Now, if I could just get some help changing diapers at 3 a.m.
How do you select the best arbitrator or mediator for a private dispute when the only thing that you and your opposing counsel can agree upon is that your clients disagree?

Let me begin with mediators. Remember mediation, unless it is court ordered, is voluntary and always non-binding. It is more of a supervised or structured negotiation. As a result, the parties should be motivated to discuss and resolve the dispute. Assuming that face-to-face negotiations are not an option or have already been tried, there are three or four things that I think you should look for in a mediator.

First, a mediator needs an even keel. By that, I mean that he or she should have an easy going spirit and be the personification of tact. A real modern-day diplomat.

If you know me, you know I have just gone a long way toward disqualifying myself to serve the mediator for most disputes. I have a Germanic/Aggressive/Type-A personality. It is my experience that a mediator with my personality fails in all but the most unusual of circumstances. Be careful before you ask someone like me to act as your mediator. If you believe you have the right personalities on both sides of the fence then fine, but be forewarned, more often than not you need a soft touch and not someone like me that carries a sledgehammer as his main tool during the mediation.

Second, you want someone with training or experience as a mediator. Do not let your dispute become a classroom for someone that wants to do mediation. Look for a proven commodity with a track record of success and at least a modicum of training. In my book, more training trumps experience. As you know, practicing attorneys are frequently accused of being amateur psychologists. Your mediator should be the best amateur psychologist you know. They should also be trained in how to use that talent to resolve disputes. When I go to choose a mediator, I want one with some specific training, because a well-trained mediator is the best of the amateur psychologists. Take the time to look at training and track record. You will not be disappointed.

Third, you want someone with a lot of experience dealing with disputes that are similar to your client’s dispute. Over the years, my clients and their opposition have taught me an enormous amount of knowledge about construction and the construction industry. It is because of this background and experience that I still consider myself a potential mediator, but only for construction related disputes. Construction disputes frequently need a heavy handed mediator. I would be of no value trying to mediate a dispute involving labor or education law.

Experience in the industry is a must and sometimes even trumps education.

Fourth, and most important of all, the mediator needs to be someone the other side trusts as having the personality, experience and training to resolve the dispute. What you think of the mediator in not nearly as important. In order to understand this point, let me remind you that mediation is not binding. Your client is not obligated to resolve the dispute. Your client is only obligated to try to resolve the dispute. The job of the mediator is frequently described as pushing each of the parties toward the other party’s position. Think about it, will it not be easier for the mediator to push your opposition toward your client’s position if they trust and have confidence in the experience and training of the mediator?

Bottom line, if all else fails, outline some requirements that you will accept in a mediator and then let your opposition choose the mediator. You will not be disappointed with their choice.

Now the selection of an arbitrator is a horse of a different color. Normally, by the time you get to the point of selecting an arbitrator, your client will be obligated to live with the decision of the arbitrator. Choose wisely Obi-Wan! It is the most important decision you will make. The following is a simple process that will help assure the appointment of an experienced and competent arbitrator for your dispute:

1. Remember you want an arbitrator that is experienced in the industry that generated the dispute. More often than not, it will be difficult to find five arbitrators with the experience you want. You may want your arbitrator to also be an attorney. Now you are limiting the available field significantly. If you add experience as an arbitrator, you might have to settle for one qualified candidate.
2. a. Try to agree in advance with your opposing counsel as to the general qualifications of the candidates to be your arbitrator.
3. b. Try to develop a script you will both use when describing the dispute to potential candidates.
4. c. Try not to focus on the cost of the arbitrator. Remember, you get what you pay for.
5. d. Finally, try to agree in advance as to the number of challenges each of you will use during the selection process.
6. Each party will nominate a group of preferred arbitrators. The advocates agree in advance as to the number of names they will submit. Usually, the parties submit three to five names.

The names are listed by each party in their order of preference. Number one being the most preferred candidate, number two being next and so on.

The advocates can meet to exchange and open the lists – or at least they used to meet. Now all you have to do is call each other and agree to send the list by email to the other at the same time. Oh, for the good old days, we would have gotten a good lunch and been paid to eat it.
If there are common names on the lists of the parties, the other names are discarded.

a. If there is only one common name, you are done. Do not pass go. Stop here. You have your arbitrator.

b. If there is more than one common name, the one with the highest preference is selected. The preference is determined by assigning a number to each name submitted based upon the order of preference that it appears on the party’s list. The first on the list receives a one, the second a two and so on. After assigning the preference numbers, total them for each candidate. The candidate with lowest preference combined total is the preferred candidate and is the arbitrator for your dispute if the candidate will accept the position you are done. Keep the list. You may need to go to number two on it.

c. When there is a tie for the preferred candidate, the candidates’ names are put into a hat and one is pulled out. Once again, you have an arbitrator. Moreover, your arbitrator has the confidence of both parties. Keep the other name and go to it before going back to the list.

When there are no common names, each party has the right to strike or challenge a name or two from the list of the other party without grounds or cause. How many strikes or challenges are allowed should be determined in advance.

a. In the case of three names, I recommend that each party would have one strike or challenge a candidate from the list of the other party. In the case of five names, each party would be entitled to strike two or three names from the list of the other party. A word to the wise, do not push for five names on each list unless you know a lot of good arbitrators. You will find that deciding upon the arbitrators to select is an important part of the process, and finding five candidates that you believe are qualified will be harder than you expect.

b. The parties then review the qualifications of each remaining candidate. Each party rates all of the remaining names on the list of remaining candidates by preference. The preference lists are exchanged. Again, the candidate with the highest preference rating, represented by the lowest total preference number, is your arbitrator. In the event of a tie, put the names of the tied candidates in a hat and pick one. As before you have an arbitrator. And again, your arbitrator has been selected as the best of the candidates by both parties. Your arbitrator is likely to have the confidence of both parties.

Remember, it is all right to contact potential arbitrators and interview them about their experience as arbitrators and experience with disputes similar to your client’s. You should also discuss potential conflicts, biases or perceived biases, but do not discuss the facts of your case or your client’s position. If you do so, you will run the risk of disqualifying the arbitrator, by creating a bias where one did not exist before. Therefore, when you are talking to a potential arbitrator for your client’s dispute, limit the interview to the arbitrator’s experience and potential conflicts. Anything else is a mistake.

Selecting an experienced and competent arbitrator that both sides trust and respect can be a challenge. If you are successful, the entire process and both parties will benefit.

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In the previous Lawyers Quarterly, I compiled examples of instances of where the Professional Judgment Rule may come into play in Ohio’s courts. Now I’m delving deeper, examining issues such as who determines whether or not an attorney made reasonable decisions and why it’s necessary for the law to be debatable. To begin, we need to look at who determines whether or not the attorney made reasonable decisions.

The cases tend to mix and match; in other words, sometimes they are talking about the fact that the law is debatable and at the same time discussing a strategic decision that the lawyer made. For example, in the case of Franjesh v. Berg, 196 Ohio App. LEXIS 4345, a 1996 decision from the Ninth Appellate District, we find that “even if an attorney chooses what hindsight demonstrates to be a questionable tactic, an attorney should not be found liable when a debatable point of law is involved.”

If the attorney made a reasonable decision with regard to trial strategy, why is it necessary for the law to be debatable? In the same case, the court stated, “It is well established that an attorney cannot be held liable for malpractice for lack of knowledge as to the true state of the law where a doubtful or debatable point is involved.”

In the case of E.B.P., Inc. v. Cozza & Steurer, 119 Ohio App.3d 177, 1997 Ohio App. LEXIS 1326, the court was involved in a case in which the plaintiff was complaining about a settlement. The court stated, “A settlement entered into as a result of an attorney’s exercise of reasonable judgment in handling a case bars malpractice claims against the attorney.” Citations omitted. “However, a legal malpractice claim is not barred when the attorney has acted unreasonably or has committed malpractice per se.”

We know that the court is referring to situations such as not filing within the known statute of limitations to constitute negligence per se, but who determines whether or not the attorney has acted unreasonably and what is the standard for so determining?

Commentators in some courts have indicated that the Professional Judgment Rule, whatever it is, is an affirmative defense. However, that does not seem to be correct. A Professional Judgment Rule simply operates as a denial of the claim that the defendant committed malpractice. If it is not an affirmative defense, then the burden of proof does not shift. A case which should warn the hearts of all lawyers, and especially those who have been unfortunate enough to be sued for malpractice, is the case of Amistadi v. Spangenberg, 1979 Ohio App. LEXIS 10361.

In the trial of the legal malpractice case, the trial court directed a verdict for the defendant attorneys. The Court of Appeals, affirming the lower court’s decision, held that the directed verdict was properly entered because the plaintiff failed to introduce proof that the attorney’s trial decisions were causative of the final resulted pain. The court found that the attorney’s decisions not to introduce certain books and records in the underlying trial were not negligently made and that the decisions were made thoughtfully and with the full comprehension of the results of the decision. The court states:

It is one of the peculiarities of the practice of law – particularly in the trial courts – that the same, thoughtful decision made by counsel regarding a particular question or issue is considered superbly Solomon-like by a winning client and an act of catastrophic stupidity by a losing one. Thus the correctness or incorrectness of counsel’s decision in relationship to the final result is completely immaterial.

The true question is whether the attorney, in making his decision, acted in a manner compatible with that of other qualified members of his profession. We differ slightly with the opinion of the trial court in this respect. The practice of trial law involves standards of different kinds, different facets than those gentlemen required in the general practice of law.

The court concluded its decision affirming the lower court’s granting of a motion for directed verdict for the defendants by stating, “We agree that reasonable minds could not disagree with his decision not to introduce the books and records was not one made negligently, but one made thoughtfully and with full comprehension of the results of that decision.”

Does Ohio have the Professional Judgment Rule? Whether it does or it doesn’t, does it matter if the court gives the jury a charge that reasonable trial tactics and trial strategy are not actionable? However, it seems incumbent upon trial judges to direct verdicts in favor of lawyers when reasonable minds could only agree that the trial strategy adopted by the defendant lawyer was one of several options, all of which were reasonable, and not try to make a distinction between the one that the defendant lawyer picked and one that might have been more reasonable or have a better chance of success. Because, if the trial judge lets the issue of negligence go to the jury, then it is clear that the trial judge has ruled that the trial strategy that the lawyer chose was not, as a matter of law, one upon which reasonable minds could agree was reasonable. The reasonableness of the trial strategy then becomes a jury question. If the trial court concludes that based upon the evidence presented, the defendant lawyer’s trial strategy was not as a matter of law “reasonable”, then the case goes to the jury based upon the opinions given by the various experts in the case as to the reasonableness of the lawyer’s decision.

In conclusion, the holding in the Amistadi case is clear that both the trial court and the court of appeals held, as a matter of law, that because the attorney exercised his professional judgment in a reasonable manner, there were no questions of fact to be presented to the jury and thus the trial court correctly directed a verdict for the defendant lawyer.

Based upon the case law, we know that in cases where the malpractice plaintiff was forced to settle the underlying case because of the per se negligence of the plaintiff’s lawyer, that the settlement is not a bar to the malpractice action. What we don’t know is whether or not the defendant lawyer is always entitled to a directed verdict or perhaps even the granting of a motion for summary judgment in his or her favor when the lawyer’s conduct cannot be labeled as negligence per se.

The cases say that Ohio does not have a Professional Judgment Rule, but clearly if the law is unsettled and that fact led to the unfortunate result, then the lawyer is not responsible. Decisions made by a lawyer as part of trial strategy should not be second-guessed and judged by hindsight and the lack of success of the strategy is not a factor in determining whether or not malpractice occurred. The end result of the decision-making process is never a factor in determining whether or not malpractice occurred, but the issue is how the decision was made and was the decision-making process reasonable.

The Professional Judgment Rule, to the extent that it exists in Ohio, should not be an affirmative defense but is simply part of a denial of the claim that the lawyer committed malpractice.
Civil rights guarantee equal treatment under the law. The struggle for civil rights is almost exclusively seen as the struggle against discriminatory treatment, by both public and private actors, towards individuals or groups based on categorizations such as race, age, sex, race, ethnicity, religion, sexual orientation or disability.

In this narrow sense, civil rights protections arise first from the Equal Protection Clauses of the Fifth and Fourteenth Amendments and then from a vast array of federal, state and local antidiscrimination laws and regulatory frameworks.

There is, however, another aspect of civil rights that warrants some discussion before turning to the role of the courts in civil rights enforcement. Consciously or not, we have come to accept a distinction—mostly subtle, but sometimes pronounced—between “civil rights” and “civil liberties.” Where the former is concerned with equality among all individuals within the collective, the latter is concerned with the autonomy of each individual specifically. Civil liberties guarantee an individual’s freedom from unduly, though not always exclusively from, interference with an individual’s autonomy. Civil liberties guarantee an individual’s freedom from interference with the values certain persons consider sacred.

Consciously or not, we have come to accept a distinction—mostly subtle, but sometimes pronounced—between “civil rights” and “civil liberties.”

Civil rights and civil liberties together or separately, the existence of any right is only relevant if and when it has been denied or threatened in some way. That is, without a deprivation or the threat of deprivation, discussion of rights is wholly academic. It is only when faced with a deprivation that the law can tell us how much we value the right threatened. A given right is only worth the remedy or correction that can be obtained for its deprivation, and when there is an actual or threatened deprivation of a particular right, there arises a dispute. The individual who has been deprived of his or her right will seek some form of redress or correction from the individual or entity responsible for the deprivation. The responsible individual or entity will then deny the deprivation, concede the deprivation but challenge the redress or correction sought, or some combination of the foregoing.

These disputes give rise to the courts’ involvement in civil rights. Courts resolve disputes. That is their function. Without a dispute, there is no court involvement. While it may seem such a simple point, it is one that seems to be neglected in our modern political discourse. Courts are, by their very nature, reactive bodies. Courts can and have contributed to both the evolution and de-evolution of civil rights as a matter of policy, through both “judicial activism” and “judicial restraint.” Indeed, one can reasonably argue that, although courts have recently issued substantive decisions expanding the field of civil rights, see Obergefell v. Hodges, 135 S. Ct. 2584 (2015), they have also been simultaneously making it more difficult for would-be plaintiffs to vindicate those rights through more restrictive remedial and procedural decisions.¹ In either event, when a court’s ruling has broad sweeping consequences for a whole universe of civil rights, such a ruling is still anchored to the constitutional, statutory or regulatory frameworks upon which it is founded. It is also tethered to the particular dispute before that particular court at that particular time.

Ultimately, the courts are the final “enforcer” of civil rights. Absent some amicable resolution or abandonment of a dispute, all disputes involving civil rights will find their way into and through the judicial system for a final determination. Civil rights issues do not begin in the courts. It is the province of policymakers in the state and federal executive and legislative branches to hammer out those laws and regulations that set the tables for our disputes. But those disputes will almost invariably end in the courts, which interpret and apply the existing constitutional, statutory and regulatory frameworks to the particular facts of those disputes and then final decisions. With the notable exceptions of the state and federal high courts, courts do not get to pick and choose when they will consider civil rights issues or what particular civil rights they will consider. Nonetheless, with each and every dispute that is resolved, courts increase the supply and the clarity of law governing civil rights at large.

As our local, state and national discourse begins to move beyond intentional discrimination and as our policymakers begin to focus on more elusive discrimination issues, such as implicit and institutional biases, there will undoubtedly be changes to our existing federal, state and local antidiscrimination laws and regulatory frameworks, or new laws and frameworks altogether. This will most certainly lead to new and innovative civil rights disputes finding their way into our courts. The courts will, of course, continue resolving those disputes and expanding both the supply and the clarity of our civil rights laws one case at a time.

¹ For a discussion of how the courts have been curtailing civil rights through remedial and procedural decisions, see Sarah Staszak, No Day in Court: Access to Justice and the Politics of Judicial Enfranchisement (2015).

A spouse comes home, drained from the intense barrage of challenges they faced all day at work. Needing a place to vent their frustrations, doubts, and thoughts of helplessness, they wait for their spouse to return, pacing with anxiety. Home is the only place they can receive solace, understanding and love.

They have nowhere else to go. The pressure caused by publically masking their true feelings has become too forceful to contain. Once their spouse arrives, they immediately burst open with uncontained emotion. “I had a really bad day.” However, the other spouse responds: “You think you had a bad day. Let me tell you what happened to me!”

Anyone who has been the responding spouse in that scenario can tell you that the ensuing conversation never goes well. That is emblematic of the “Black Lives Matter” and “All Lives Matter” monologues. If both spouses stubbornly focus on trying to convince the other that they, in fact, had the worst day, it damages the effectiveness of the very relationship where healing and cooperation on how best to respond to the bad day would otherwise thrive. That does not mean the two spouses should avoid talking about their respective experiences altogether. In a relationship, you can only build trust and intimacy or connectedness through validation of your partner’s emotions, particularly during times when they feel the most vulnerable. So how you have the conversation about race can be just as critical, if not more so, than actually having the conversation. No positive byproduct can exist when you combine a lack of trust with a community of disconnected souls.

Although validation is a linchpin of effectively communicating with each other about race, validation does not equal agreement. You can disagree about whether or not it’s better to send your kids to public or private schools, or to kneel or stand during the national anthem. What’s critical is how you engage in that discussion and that you approach the conflict sober to the reality that the two of you are inextricably linked. Married, if you will, for better or worse, in sickness and health, and where divorce is not an option. If you respect and value your partner’s perspective and personhood, the relationship will not only survive the disagreement, it will be strengthened because of it.

Conversely, being dismissive of others’ opinions, labeling people racist or using other toxic language only blockades the honest, sometimes underdeveloped and frequently clumsy dialogue that is necessary for both parties to grow.

Discussion about race are difficult because the starting point for any meaningful dialogue must begin with validation. The necessary elements of validation are active listening, acknowledging and accepting what the other has said, asking follow-up questions to clarify and deepen your engagement, and showing in a sincere way that you understand. Validation without agreement is always more preferable than acquiescence without respect. Among these elements, lawyers are uniquely qualified to facilitate real dialogue about race in America because we exhibit proficiency with these elements in our daily practice.

One reason lawyers should play a role in promoting conversations about race is because lawyers manage conflict for a living. Be it criminal or civil law, public or private employment, transactional work or litigation, there are always two sides of every matter. Lawyers are trained not just to advocate their best arguments, but they also analyze the strengths and weaknesses of all the viewpoints of a given issue. Lawyers specialize in active listening. For example, when conducting cross-examination, litigators are trained to listen to the responses and not simply read the questions prepared sequentially. In discussions about race, some people become too quick to anticipate the response without truly listening to it, and make the mistake of moving on.

A common disconnect occurs whenever someone invariably invokes slavery into the discussion. Some view the nation’s abhorrent history of slavery to be too tenuous to be relevant to the challenges we face today. After all, no one living today actually owned or enslaved anyone. For others, they see slavery as the rock thrown into the pond of hate, and the rippling waves emanating from the impact of that rock are replicated and felt again and again by anyone submerged in that pond. They see it in the last officially recorded lynching in America in 1968, four years after the Civil Rights Act was passed. They see it in the death of James Byrd in Jasper, Texas, who was dragged to death behind a pick-up truck in 1998. They see it in the murder of Terence Crutcher in Tulsa, Oklahoma in 2016 while extending both of his hands above his head in surrender to the police.

Acknowledging and accepting what a person says is key. Lawyers know that in order to drive resolution you have to clearly acknowledge what the person is saying to methodically address and narrow the open issues. A lawyer might say, “I understand that you believe you lost investment income beginning in March through August and you feel my client is responsible, is that correct?” Again, in this element of validation, there is no requirement to agree. All that is needed is an outward acceptance of what the person is saying and how the person feels. Discussions about race relations in America are deeply personal and emotional. When you acknowledge and accept what the other person is saying, it allows room for that person to lower their defenses and start to invest in a real dialogue of understanding.

The last two elements of validation involve asking follow-up questions. To promote understanding and, showing in a genuine way that you understand. If there is one thing lawyers love to do, it’s ask clarifying questions. Years ago, a popular saying was “It’s a black thing, you wouldn’t understand.” I hated that saying. It implied that there were some things so far beyond the comprehension of anyone who was not black, that it was pointless to even try to explain it. While it is true no one can really walk a mile in the other person’s shoes, we have to be willing to educate each other and work each day toward a deeper, richer understanding of people unlike ourselves.

Lawyers have a unique skill set that can be applied to navigating racial dialogue in America because we manage conflict for a living and we use the elements of validation in our day to day practice. Validation builds trust and connectedness; trust and connectedness are the foundation of any relationship. It is the strength of the relationship between the various races and cultures in America that will dictate our healing, our trajectory, and our success. Many of the difficulties involving race relations in America can be solved, and lawyers can play a vital role in that solution.

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We have come so far in the past few years with an eye towards marriage equality and equal rights for Lesbian, Gay, Bisexual and Transgender Americans. I don’t know about you, but I feel as if that long awaited and promised idea of “liberty and justice for all” is being snatched away as one of the most anti-LGBT Americans is being elected to the White House. And no, I don’t mean Donald J. Trump.

Vice President-elect Michael Pence has been one of the most historically anti-LGBT leaders in modern America. From running a think-tank that published virulently anti-gay articles, to trying to divert HIV/AIDS money to fund conversion therapy, to actually legalizing anti-LGBT laws, to decrying the “mainstreaming of homosexuality in the military” after Don’t Ask Don’t Tell was repealed, he’s made a career out of becoming everything he promised to decry.

In this article, I have laid out the existing systems in place that you, your family members, friends and clients can take advantage of in order to provide some protection against Pence and the policies he has promised to inflict on this nation.

Establishing Parentage

Stepparent Adoption

“Stepparent” adoptions are the mechanism that we use to allow a non-biological parent to petition the probate court to name them as a child’s parent along with all the rights and responsibilities that come with that title and privilege.

In order to be eligible, the parents must be married. Most counties require this for at least one year, in any jurisdiction. The parent who gave birth must provide their consent and the petitioning parent must undergo a background check, home study, submit references and have a fire safety inspection performed. The timeline for the final hearing is six months after the date of filing. Adoption is one of the longest established ways to create parental rights and many married same-sex couples are using this route to protect their families.

Second Parent Determination

If you live in forward thinking Franklin County and meet certain criteria, you and your spouse will be able to establish parental rights without the effort and expense of adoption with a “Second Parent Determination.” Here are the requirements:

1. You must have been married in any jurisdiction prior to the child being born.
2. You must have conceived the child using artificial insemination and complied with the Ohio Revised Code Requirements:
   i. The insemination was performed by a physician or a person who is under the supervision and control of a physician.
   ii. The donor had a physical, blood tests and medical history taken prior to the artificial insemination taking place. If you use a sperm bank, this requirement has been met.

In this article, I have laid out the existing systems in place that you, your family members, friends and clients can take advantage of in order to provide some protection against Pence and the policies he has promised to inflict on this nation.
Think of Us Columbus, We All Look Up to You:
A History of Education Rights in Columbus

By Dilynn R. Roettker

Forty years ago this March, U.S. District Court for the Southern District of Ohio Judge Robert Duncan found that the Columbus Board of Education was intentionally segregating the Columbus City School District.1

It would be another two years until Penick v. Columbus Board of Education2 was affirmed by the U.S. Supreme Court in the summer of 1979, solidifying the legitimacy of Judge Duncan’s enforcement of the principle of Brown v. Board of Education that “separate educational facilities are inherently unequal.”

Penick required the Columbus Board of Education to remedy the effects of certain activities – such as drawing attendance zones around racially cohesive neighborhoods – that had perpetuated a segregated school system after Brown was decided. To integrate the district, the Board approved a plan to bus about 40,000 students – half the district’s population – with the goal of having historically black and white schools instead reflect the makeup of the district as a whole.4

Judge Robert Duncan remembers sending his daughter, Tracey, off to school the fall of 1979. That day, the city of Columbus held its collective breath, conscious of the eyes of the nation as it began busing students in accordance with the court order. As the community prepared for upheaval, an advertising jingle coined to encourage a peaceful implementation quickly gained household recognition. “Think of us Columbus, and give us kids a break. Stop and think it over, our futures are at stake. Remember we’ll be learning from what we hear and see. So think about the kinds of kids you want us kids for be. Think of us Columbus, no matter what you do. Remember this September, we all look up to you.”

“When the buses started rolling, I remember taking my daughter to the bus stop. We had not one incident,” Judge Duncan recalls.5 The uneventfulness of the rollout became a testament to the Columbus community, as the riots and demonstrations the national media waited for never came.

A month later, on a gray October morning in 1979, Olde Orchard Elementary received an unexpected recess. It wasn’t until later that students learned the purpose of the diversion: Tracey Duncan had been the target of a bomb threat.

As a constitutional remedy, busing was intended to counteract the intertwined relationship of housing and school placement by compelling schools to eliminate explicit segregation by going beyond token integration. The hope was that busing would support the healthy development and racial integration of Columbus neighborhoods, eventually rendering the practice irrelevant. Unfortunately, despite the absence of a timely uproar as busing began at full force in Columbus City schools in the fall of 1979, the bomb threat at Olde Orchard Elementary provides a poignant example of the unrest many families felt.

Scholars argue busing intensified the axiom of desegregation as illustrated in Brown: “What is integration for whites is isolation to blacks, and integration to blacks is invasive to whites.”6 Rather than bus their children, many families with the resources to simply moved to the suburban school districts, intensifying and entrenching resource inequity, segregation, and poverty in the heart of Columbus. “The [Columbus City] school district went from two-thirds white to two-thirds black between 1976 and 2004,” said Sharon Davies, Director of the Ohio State University Kirwan Institute for the Study of Race and Ethnicity.7

This rapid decentralization frustrated the efforts of integration proponents, who saw their efforts mooted as white students retreated to the suburbs, increasing the district’s concentration of poor and black students. This strained relationship between busing and the city’s geographic and economic growth eventually frustrated the efforts of desegregation in Columbus City Schools, with detrimental social capital and economic growth in favor of the city’s expansion.

Judge Duncan lifted the court order in 1985, setting the stage for negotiations in 1986 that solidified district boundaries between Columbus and the surrounding suburbs, along with assigning rights to future annexed land and development revenue. A decade later in 1996, busing officially ended in Columbus City Schools.8

To its most stalwart opponents, busing represented the bane of development, property values and neighborhood safety. In response, Columbus Schools Superintendent Jim Hyre advocated that a successful urban district was essential to the health of the city. “If Columbus schools are strong, you’ll have a strong central Ohio area ...[But] the ostrich technique will not work. Poor people and blacks are not going away.”9

Today, black students – at 55 percent of the district’s student population – outnumber white students more than two to one. Judge Duncan found it unfortunate that other branches of government – each with more means than the courts – failed to confront desegregation until it ripened into a constitutional issue.10 In his final order, he remained troubled by continuing racial disparities in discipline. Today in Columbus City schools, black students are 2.6 times more likely to receive an out of school suspension than white students, raising concerns about potential civil rights violations involved in discipline practices. This is troubling as even one suspension increases the likelihood that a student will drop out of school. These consequences are reflected statewide, as Ohio has the 3rd-largest gap in the nation between black and white graduation rates.11

Responding to the intertwined relationship between community conditions, segregation and academic achievement at the local level, many have worked for

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decades to revitalize Columbus neighborhoods, striving to use holistic tools to prioritize continuation of community character and to enhance stability for current residents. For example, community groups, those like Southside STAY and Clintonville Go Public, engage families to invest in their neighborhoods by keeping their children in the local schools, with the goal of improving chances for other students in the school. They also work to rally support for development plans that include building infrastructure and increasing access to community resources.12

Studies show that busing undesirably improves academic outcomes for black students – at no academic cost to their white peers. As busing became increasingly prevalent across the country, the achievement gap between black and white 13-year-olds decreased by half. Black students who benefited from integrated schools had higher rates of high school graduation and increased participation in higher education. Ultimately, black students with the benefit of an integrated education made 15 percent more money in over the 2016-17 school year, ESSA prioritizes reducing in Academic Progress

Brown explicitly decried the concept that equal resources could neutralize the negative impacts of segregation, highlighting the lasting harms bred by a cemented identity of inferiority. Civil rights advocates often refer to “race-neutral” educational equality efforts as a misnomer, and many remain optimistic as more communities each day tackle conversations about the intersection of race and poverty. As Judge Duncan noted in his opinion, “A school desegregation problem is one we could all do better without, but there is no denying that it is just that – a problem for our community – a problem that simply won't go away if left alone.”10
Our industry is comprised of long hours, hundreds of emails, lunches-on-the-go, after work functions and endless client calls. This busy schedule leaves us with no time to focus on our health – that’s why I am here to help you get the jump-start you need to a healthier and better you! You may think you eat healthily, but do you really? In a world of ever-changing fad diets, calorie counting and good advertising, our environment makes it difficult to know exactly what is best for our bodies. That’s why I am going to share with you the exact formula to achieve optimal health. The best part is – it does not involve any calorie counting!

What’s the secret to optimal health and more energy? A whole food, plant-based diet – and it does not have to be all or nothing – by incorporating more plant-based meals into your weekly routine:

- Eliminate meat and red meat.
- Eliminate dairy, meat, like beef, pork and lamb, is a probable carcinogen – a substance that can cause cancer.¹
- Eliminate all or nothing – by incorporating more plant-based meals into your weekly routine.

**Cut out or severely restrict your intake of processed meat and red meat.** In case you missed the World Health Organization’s report last year, processed meat, such as hot dogs, ham, bacon and deli meats, is a carcinogen and red meat, like beef, pork and lamb, is a probable carcinogen – carcinogens cause cancer.⁵

**Ditch your dairy coffee cream!** Instead, swap it out for a non-dairy creamer, or even make your own. I’ve shared my very own recipe off to the side.

**Implement Meatless Mondays.** Start with just one day a week where you don’t eat any meat, dairy or eggs. I promise your body will thank you for it.

**Have greens every night with your dinner.** We all know how important veggies are, but green vegetables – think spinach, broccoli, and green beans – are especially high in nutrients, minerals and antioxidants.

**Snack on fruit!** Fight off your afternoon fatigue by grabbing an apple or banana over pretzels or chips. Fruit is loaded with fiber and other minerals that balance out the naturally occurring fructose, leaving you satisfied and energized.

**Meal prep.** I cannot stress this enough – plan your meals or snacks on Sunday and prep everything in advance so that you have healthy, quick meals throughout your busy week. One of my favorite grab-and-go snacks is overnight oats!

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**Coffee Cashew Creamer**

- 2 cups water
- 1 cup cashews
- 3 tbsp maple syrup
- 2-3 tsp vanilla
- Pinch of salt

I will leave you with some final thoughts. Several of the leading causes of death in the United States, including heart disease, cancer, stroke and type-2 diabetes, are chronic lifestyle diseases. These killers are caused by unhealthy behaviors that we have the power to change, such as diet, which means makes them preventable and even reversible.⁶ Yes, you heard me – the leading causes of death are preventable with a plant-based diet, yet they are still taking the lives of millions of Americans each year. Why? I believe it’s because of a lack of awareness of the relationship between food and health. It seems too simple, but it’s backed by volumes of scientific, credible studies. A spoonful of plant-based education may buy you a lifetime of health and longevity!

My goal is to inspire you to start taking responsibility for what’s on your plate. What you do with this knowledge is up to you. If you have one takeaway from this article, just remember that your health starts with what’s on the end of your fork. Follow me for more wellness tips and simplistic, delicious plant-based recipes on my website, www.plantpoweredconsulting.com.

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1 https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3662288/
3 http://www.cdc.gov/chronicdisease/overview/
4 Prevention & Reverse Heart Disease by Dr. Caldwell B. Esselstyn, book credited to saving President Bill Clinton's life.
6 OhSheGlows.com, plant-based food blogger

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**New Year, New You**

Take Charge of Your Health and Change What’s on Your Plate

BY DANIELLE M. DEMMING

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**Cooking Tip:**

**Coffee Cashew Creamer**

- Soak 1 cup cashews in water for 4-6 hours (or overnight)
- Drain and add cashews to a high-speed blender with 2 cups water, a pinch of salt, 2-3 tsp. of vanilla and 3 tablespoons (add more for extra sweetness) of maple syrup
- Blend until smooth & creamy, and enjoy!

Danielle M. Demming, Esq.
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**Spice of Life:**

**Coffee Cashew Creamer**

- 2 cups water
- 1 cup cashews
- 3 tbsp maple syrup
- 2-3 tsp vanilla
- Pinch of salt

**Find more inspiration on plant-based living and check out the following resources:**

- Forks Over Knives, educational documentary
- The China Study: The Most Comprehensive Study of Nutrition Ever Conducted, by Dr. T. Colin Campbell, book
- Prevent & Reverse Heart Disease by Dr. Caldwell B. Esselstyn, book credited to saving President Bill Clinton's life
- OhSheGlows.com, plant-based food blogger
Italy is Delightful
No Matter Where Part 1

BY HON. DAVID E. CAIN

Rome is a robust resource for those who relish religion and ruins. The Sorrento/Amalfi Coast area is eye candy of the highest order. And, the Tuscany region has everything for everybody.

We started our Italian travels by heading northeast from the Rome airport, taking a two-hour drive to the shores of the Adriatic Sea. We had a special motive. Our traveling companions, attorney Pete Boyuk and his wife Kathie, took us to Giulianova, a city of about 25,000 in Abruzzo, so that Pete could look for relatives of his maternal grandfather who grew up on a farm nearby.

And he found them — through a bartender named Carlos who couldn’t speak English but recognized the family name of Ferroni because of a woman who was married to a guy he knew who owned a hotel. He made a call and handed Pete the phone. The next day, the extended family of Phillipo Ferroni, a nephew of the grandfather, picked us up at our hotel and treated us like visiting royalty. They took us to their homes and to dinner in the old town square that featured a captivating view of the night time seashore. The day after that, they escorted us to an ancient fort, The Fortress of Civitella del Tronto in the mountains west of town. It was used to fight the French in the 1500s and 1800s and offered breathtaking panoramic views of farms, old town rooftops, mountain ranges and orchids lining rolling hills all the way to the sea. The fort was restored during a 10-year period beginning in 1975 and offers a four-room Museum of Weapons in addition to the Aragonese castle, drill-grounds, water cisterns, long sentry ramparts, and the ruins of the Governor’s Palace, Saint James Church and the barracks. That night, they even took us to mass at a beautiful, statue-laden church and monastery back in Giulianova. I am not Catholic but may have converted had I stayed in Italy much longer. Then, they took Pete and me to the farm where the current resident, who raises milk and beef cows, sheep and vegetables, greeted us warmly and took us through old barns and the house where the grandfather spent his boyhood days. By the time we left the Ferroni’s, it was hard to say goodbye.

We turned in the rental car at the Rome airport and used cabs and mass transit from then until we left the area. Only insanity would allow otherwise. The Roman cab drivers have to be the best in the world — speedily and constantly crisscrossing between legions of other crisscrossing vehicles while ignoring a swarm of scooters darting around them. I’d just close my eyes and thank the Heavens that someone else was behind the wheel.

From our hotel. A sidewalk vendor suggested we jump on a bus. The signs match routes with bus numbers, he pointed out. The cost? “Free. Just get on. They don’t have time to collect.” We were at the coliseum in short order and toured what is the biggest amphitheater ever built in antiquity, between 75 and 80 A.D. More than 150 feet high, it could seat 55,000 and once featured everything from executions to gladiator duels and even to naval battles where they flooded the lower level to accommodate ships.

Then, we traipsed around the famous arches and palaces, the Palatine Hill and the Roman Forum just east of the coliseum. After relaxing at a nice outdoor café and visiting a church named St. Peter-in-Chains — you can view the encased, actual chains that once bound the famous disciple — we returned to the bus stop where we arrived hours earlier and waited for Bus 87. When it came, it was full of commuters. Standing room was barely available. We kept careful watch for familiar sites near the hotel. They never appeared. Finally, the nearly empty bus was passing green spaces, country sides. We were somewhere “outside the wall” when the driver pulled onto a large lot, turned everything off, picked up his lunch pail and left with only four of us still on the coach. Fortunately, a couple cab drivers were nearby. Unfortunately, they would only response by saying “finis, finis” when he implored...
them for a ride. Nonetheless, our wives somehow were able to talk them into calling us a cab that hadn’t checked out for the night. After several miles of riding, I noticed we were passing the coliseum. A few minutes later, we were at our hotel.

The next day, we visited Vatican City with a tour that took us through the Vatican Museum, the Sistine Chapel and St. Peter’s Basilica. The ceremony to bestow sainthood on Mother Teresa occurred the day before, and it seemed that tens of thousands of people were still hanging around. The line to get into the museum was three blocks long. Advance tickets saved the day as our entrance was relatively quick. The architecture, art and sculpture were all I expected it to be.

A day later, we took a train for a little more than 100 miles southeast to Naples, where we boarded a ferry boat for a windy, rocky ride across a bay of the Tyrrhenian Sea to Sorrento. It’s one of the most beautiful tourist places in the world, featuring cliffs overlooking deep blue waters scanned by royal blue skies with marshmallow clouds and Mount Vesuvius anchoring the horizon.

Pete had planned the entire vacation for a windy, rocky ride across a bay of the Tyrrhenian Sea to Sorrento. It’s one of the most beautiful tourist places in the world, featuring cliffs overlooking deep blue waters scanned by royal blue skies with marshmallow clouds and Mount Vesuvius anchoring the horizon.

Pompeii has been a tourist destination for more than 250 years and now attracts about 2.5 million visitors every year. The town was founded in the sixth or seventh century B.C., then came under the domination of Rome in the first century B.C. Pompeii was destroyed and buried under 13 to 20 feet of volcanic ash and pumice when Mt. Vesuvius erupted in 79 A.D. At the time, its population was by estimate about 11,000 and it had a complex water system, an amphitheater, a gymnasium and a port, along with impressive art, sculpture and graffiti. The ash preserved objects for centuries because of the lack of air and moisture. Significant portions of walls, columns, houses, temples and baths are well preserved as well as many sculptures – some quite erotic – for the delight of the thousands who once again walk the streets of Pompeii on a daily basis.

Another quirk in transportation occurred after we arranged through our hotel concierge for a van to pick us up and take us back to the train station in Naples the next day for our return trip to Rome. The driver appeared at the appointed time and we headed out of Sorrento. The driver spoke no English to him, he didn’t speak all. But that was fine. Not everyone can be as loquacious as Luigi. The trip took a little longer than the ferry boat, but he stopped us at the station in plenty of time. We paid him, he left and we walked into the terminal to discover it was an airport. We explained the situation to a taxi driver who threw his hands up, declared the van driver to be “stu-pee-do” and then rushed us to the train station.

For our first day back in Rome, Mary Ann and I visited the La Catacomba Di San Callisto near a 10-mile stretch of the Appian Way that has been preserved as a national park on the eastern outskirts of the Eternal City. The catacomb, meaning near the quarry, was named after a former administrator. More than a million Christians were buried there beginning in about 150 A.D. with the most ancient at the top. They were buried in descending levels going down to 60 feet below a grassy surface about a square mile in size. The catacombs – also called cemeteries, a Christian word meaning “place of sleeping” – is wormed by 12 miles of tunnels that receive ventilation from ancient skylights. I stayed close to our guided group as I imagined my worst nightmare – spending the rest of my life wondering aimlessly and hopelessly in the pitch dark maze of tunnels through the soft ash where tombs were easily carved into the walls. The ash was perfect for entombment as it hardened upon contact with air. Rich people bought family chambers – arched rooms that looked like small underground mausoleums. Sixteen papes – at the time called bishops of Rome – were buried in the catacombs over a 300-year period of early Christianity.

We also took a short stroll on the Appian Way, Europe’s first super highway. Built shortly before 300 B.C., sections with original paving blocks are still intact. One can walk on the same stones as Julius Caesar and St. Peter. It was also the dreadful scene where thousands of slaves were crucified as an example of what happens to those that revolt.

We visited several other Roman icons that night. The next day, the four of us boarded a train for Tuscany, but I’ll save my stories of our sights there for another day.

Hon. David E. Cain
Franklin County Court of Common Pleas
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Life Outside the Law

Lawyers with Artistic License:
Steven Loewengart

BY HEATHER G. SOWALD

Steve Loewengart stopped singing to his daughters at their request. He explains, "I had a pretty big voice since opera singers don't use microphones, and I had to project over orchestras. I used to scare my children when they were little as I tried to 'dust off the pipes' now and then. Needless to say, that inhibited my singing." Now, he says they are sorry he didn't sing to them more.

Steve grew up in Cincinnati, the son of Jewish parents who each escaped Nazi Germany in the late 1930s. At the age of five, Steve sat down at a toy organ and began playing musical pieces by ear, which led to subsequent piano lessons. His rich baritone singing voice was also evident, and he performed in lead roles in high school musicals. Steve studied music in the undergraduate and graduate program at Northwestern University. He supported himself by singing with the Chicago Symphony Chorus and appeared with the orchestra as a soloist at age 21. He was privileged, he says, to be selected to sing the solo of the Mozart Mass in C minor with that symphony in 1974. Steve also interned with the Santa Fe Opera in the summer of 1976, performing in its first-ever digital recording session.

After college, Steve headed off to Europe to perform with city and state opera theater companies, primarily in Germany. It was a heady time for him, acting in the full range of traditional operas. One of his favorite roles, he says, was Don Alfonso in Mozart's "Cosi fan Tutte." His first theater also performed American musicals in German, and he recalls a particular performance when he sang the role of Joe in the English version encore of "Ol' Man River," winning him a standing ovation.

Steve's operatic career ended when, after six and a half years on the European continent, he wanted to return to the states for family reasons and to pursue a more lucrative and stable career. He applied to and was accepted to the University of Cincinnati's School of Law, where he earned his J.D. in 1987.

Steve met and married his wife Victoria, and they started their family of two children while in law school. Victoria is an émigré from St. Petersburg, Russia, who left with her family when Jews were allowed to leave in 1979. She is now the co-owner and founder of a software company, Analytics Inside.

After graduation, Steve practiced at Vorys and later at Squire Sanders as an employment law litigator. He left the latter in 2013 to open up and serve as the partner-in-charge of the Columbus office of the national employment firm Fisher Phillips.

Steve continues to gain inspiration from music and art. He enjoys traveling the world with his family and engaging in outdoor activities such as hiking and biking.

As an opera singer, Steve learned to keep his cool and perform under tremendous pressure, traits now invaluable to him as a litigator and counselor. He considers both the opera and law professions similarly theatrical and difficult. However, each profession requires necessary teamwork with other professionals, and as he says, "It's glorious when it all comes together!"
Civil Jury Trials
Franklin County Common Pleas Court

by Monica L. Waller


Plaintiff Sumonta Jarupan was the owner of four apartment units located on Cleveland Avenue. In August 2013, she hired defendant Ronald C. Williams to perform remodeling work on the units. The parties entered into a contract in which Jarupan agreed to pay Williams $12,000 for the work payable in four installments of $3000 each. Jarupan also agreed to purchase and build the construction materials. Williams agreed to finish the project by the end of October. Jarupan purchased more than $11,000 in building materials and paid Jarupan $5600 on the project.

In early November, the project was not complete. Jarupan hired a separate contractor to perform the electrical work. The contractor went to the building and found that all of the construction materials were missing. Jarupan suspected Williams because he was the last to see the materials. There were no signs of forcible entry, and Williams' tools were not taken. He had the only key to the building and found that all of the work had been undone. The parties entered into a new contract in which Jarupan hired a separate contractor to perform remodeling work. The contractor was not able to complete the work. Jarupan hired a separate contractor to perform the electrical work as well. The contractor was not able to complete the work. Jarupan asked Williams to do the complete the work Jarupan asked Williams to do but was not able to complete it. Williams also claimed that the contract was illegal because Jarupan knew about the lawsuit at the time of the transfer but claimed that the transfer was to satisfy a debt owed to his friend. Jarupan amended her complaint to add a fraudulent transfer claim. Williams denied responsibility for the missing construction materials and claimed that the contract was void due to mutual mistake and impossibility of performance because the work Jarupan asked Williams to do could not be completed for $12,000. Williams also claimed that the contract was illegal because Jarupan was attempting to convert a property owned as a single family residence into a multi-unit apartment.

At trial, Jarupan presented testimony from a witness who claimed that Jarupan would have paid her $2500 per month for the finished apartment units. The jury found in favor of Jarupan on the breach of contract claim and awarded her compensatory damages in the amount of $62,860. The jury also found in favor of Jarupan on the fraudulent transfer claim but awarded her $0 in compensatory damages. Instead, the jury awarded her $33,000 in punitive damages and found that she was entitled to attorney's fees. The jury found in favor of Williams on the conversion, negligence, and fraud claims. Both parties moved for significant settlement discussions prior to trial. Length of Trial: Three days. Magistrate Judge Lauren Beatty. Case Caption: Sumonta Jarupan v. Ronald C. Williams, aka Ron C. Williams. Case No. 14 CV 003321 (2015).

Verdict: $50,000.00 ($30,000.00 in economic loss; $20,000.00 in non-economic loss). Automobile Accident.

On June 15, 2013, plaintiff Richard Baldwin was rear-ended by defendant Cynthia Jespen. The estimated damage to Baldwin's vehicle was in excess of $5000. The day after the accident, Baldwin went to the emergency room for treatment. He then treated with a chiropractor for three months.

After a five-month break in treatment, Baldwin went to Franklin Park Physical Medicine. Two months later he was sent for an MRI which revealed two herniated disks in his neck, bulging disks in his back and a partially torn rotator cuff in his shoulder. Defendant admitted negligence but disputed damages.

During discovery, Jespen's counsel learned that Baldwin was a performer in a rock band called Hott Lucy and obtained surveillance video of Baldwin in an energetic performance that he gave. Defendant claimed contradicted Baldwin's claims of ongoing shoulder, neck and back symptoms. The parties agreed to a high-low agreement of $16,000 as the maximum recovery for the plaintiff and $39,000 as the minimum recovery for the plaintiff.


Verdict: $1,655.64 ($1,405.64 in economic damages; $500.00 in non-economic damages). Automobile Accident.

Defendant Mary Regan was headed north on Coburg Road on July 14, 2013, stopped at the stop sign, and intersected Coburg Road and Scottwood Road. As she pulled away from the stop sign, she struck a vehicle driven by plaintiff Andrea Dooley that was going through the intersection headed east on Scottwood Road. Dooley went to Mount Carmel East Hospital the day of the accident with complaints of neck, mid back, right shoulder and right arm pain. She was diagnosed with a cervical and thoracic strain and released to follow up with her family doctor.

On December 15, 2015, plaintiff Jenny Greenwood arrived at Mount Carmel East Hospital with acute appendicitis. Defendant Marcus Miller, M.D. performed a laparoscopic appendectomy. Three days later, Greenwood went to St. Ann's Hospital complaining of vomiting and abdominal pain. She was diagnosed with postoperative ileus, a malfunction in intestinal motility following an abdominal surgery. Several days later, Greenwood was diagnosed with a small bowel obstruction and taken in for an exploratory abdominal surgery. The surgeon found what he described as staple lines across two sections of the small intestine in the area of the bowel obstruction. The staples

Continued on page 42
Continued from page 41

were removed. However, Greenwood continued to have abdominal complications requiring additional surgeries.

Greenwood sued Dr. Miller and Mount Carmel Health Systems alleging that Dr. Miller fell below the standard of care when he placed staples across her small intestine during the appendectomy and that all of her subsequent abdominal complications were related to that error. Dr. Miller denied that he placed staples across the small intestine and explained that the general surgeon who performed the exploratory surgery misinterpreted what he saw. Dr. Miller argued that Greenwood developed a scar tissue that obstructed her bowel, which is a known complication of an appendectomy and can cause bowel obstructions. Dr. Miller further explained and demonstrated through CT images that the staples found were loose and were not the cause of Greenwood's bowel obstruction.


Plaintiff La Plaza Tapatia was a limited liability company that owns and operates a restaurant and grocery on the west side of Columbus. La Plaza Tapatia contracted with defendant Ohio Security Services to guard the premises and provide security for employees transporting cash and checks for bank deposits. Just before midnight on Dec. 8, 2013, Ms. Vallejo, an employee of La Plaza Tapatia, packed a bag with over $106,000 in cash and checks to be deposited. As they were leaving, Mrs. Vallejo stopped to speak to the cleaning crew and the security guard employed by Ohio Security Services stopped with her. Mr. V. stepped out of the building with the bag. He was immediately forced back into the building by an armed man. As the security guard approached, a second armed man aimed at the guard and ordered the guard to drop his gun. The guard complied. The gunman pushed Mr. Vallejo to the floor, bound him and held him at gunpoint. The gunman ultimately left taking the bag and a laptop.

La Plaza Tapatia asserted that Ohio Security Services was negligent because the guard on duty was inexperienced and failed to prevent the robbery before it happened. It claimed approximately $105,000 in monetary loss. Mrs. Vallejo claimed emotional distress and approximately $2000 in medical expenses. Ohio Security Services argued that the guard was not negligent and could not have done anything to prevent the robbery. It also claimed that the plaintiffs were negligent for leaving the building without the security guard and with such a large sum of money. It also questioned the total amount stolen because the cash and checks were untraceable and not supported by any receipts, sales documents or other records.

At the conclusion of the trial, the jury signed general verdicts in favor of both plaintiffs and defendant. The jury also answered interrogatories indicating that both Ohio Security Services and La Plaza Tapatia were negligent and that the negligence of both caused damage to La Plaza Tapatia. The jury concluded that each bore a 50 percent proportionate share of the responsibility for the incident but found that La Plaza Tapatia was entitled to $0 in compensatory damages. The jury found that Ohio Security Services was not negligent and did not cause any damage to plaintiff Maria Vallejo.

Plaintiffs moved for judgment notwithstanding the verdict and for a new trial. The Court denied the motion for judgment notwithstanding the verdict but granted the motion for a new trial on the issue of damages only, finding that the jury's award of $0 in compensatory damages was against the manifest weight of the evidence. The parties subsequently settled the case.


Defense Verdict. Automobile Accident.

On July 12, 2010, plaintiff Stephanie Kiger was stopped at the intersection of Mt. Vernon Avenue and Vernon Heights Avenue in Marion, Ohio behind a vehicle driven by defendant Michelle Tibbitts. Tibbitts turned left in front of a vehicle headed in the opposite direction that was driven by defendant Amanda Hall. Hall struck the Tibbitts vehicle and then glanced off and collided with Kiger's vehicle. Kiger claimed to have sustained multiple injuries, most significantly to her left foot and ankle. Kiger and her husband sued both Hall and Tibbitts. Allstate Insurance Company also sued Tibbitts in a separate action on a subrogation claim. The two actions were consolidated. Hall was dismissed and Tibbitts did not dispute liability but disputed Kiger's damages.

Kiger claimed that her legs were “jammed up” in the collision. When she first sought medical care at an urgent care center sixteen days after the accident she was found to have swelling in her left ankle joint. She went to an ER a month later and was diagnosed with acute soft tissue injury to her left foot. The day after that ER visit, she started treating with a podiatrist who diagnosed her with posterior tendon dysfunction. She performed reconstructive surgery in late December and a second surgery in July of the following year to remove a screw from Kiger’s heel.

Tibbitts’ retained orthopedic surgeon examined Kiger and concluded that Kiger’s injury was not related to the collision. Tibbitts also retained a biomechanics expert who testified that there was no mechanism of injury from the collision that caused the injury to Kiger’s left foot and ankle. The jury found in favor of Tibbitts.

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