The Interview

“One of the things that troubled me the most was whenever I looked at those people... there was a common thread in the fabric, and the thread would be that all of those people were very, very good lawyers.”

By Ali Haque
In an accident, the facts are often injured more seriously than the victim.

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After I decided to run for the Columbus Bar Secretary/Treasurer position, one of the most common questions I heard was “Why?” Truly, I did not have a rational response. Sure, I could have said – and sometime I did say – I wanted to give back to the profession. True, but when I said it I knew that it did not sum up my feelings. Then one day I was sitting in Magistrate Skeens’ office. We were talking about some legal issue and during that discussion he turned the topic to the upcoming elections. He asked me why – why did I care about the CBA? I am glad he asked me, and that he asked me while we were in his office. The answer was suddenly very clear.

For those of you who don’t know Ed Skeens, he is a rabid Marshall fan. Emphasis on rabid. As a member of the Thundering Herd, he proudly displays the school’s mascot. His phone rings to a live version of the chant ‘GO HERD’ that he recorded during a football game. He talked me into going to an OU-Marshall game. When I picked him up, he handed me some spare Marshall apparel. I could almost understand that, but then he pulled out some Marshall car magnets and plastered them on my minivan. His “man cave” is Marshall green with the image of a buffalo braking through the wall. You get the point.

Being in his office when he asked “why run?” led me to respond with a question of my own. “Ed, why do you love Marshall?” He paid to go to school there. He paid for his books. He paid for his memorabilia. He paid for his sports tickets. What had Marshall given him to endear such loyalty? To a rational observer, his relationship with Marshall had all been one-sided. One could argue that Marshall should be loyal to him for the amount of time and money he invested in the school. Ed’s answer to my question was simple and somewhat expected – Marshall was his alma mater. There was the answer to my question. I love the Columbus Bar because it is my alma mater.

The Latin, alma mater, means bountiful or nourishing mother. I understand that the oldest continually operating university in the world is the University of Bologna. Its motto is Alma Mater Studiorum, nourishing mother of studies. The university was founded in 1088 CE. (I didn’t know that!) The Columbus Bar is the oldest bar association in the Ohio. (I knew that.) It was founded in 1869. I am of Italian heritage, a coincidence? Who knows?

The answer to the question “why do I care” is clear to me now. The Columbus Bar is the alma mater of my professional life. It has provided me with a bounty of opportunities. It continues to nourish my development as a lawyer and as a person.

The CBA can be your alma mater if you give it a chance. There exists a host of opportunities for involvement that can only broaden your understanding of the law and the greater Columbus legal community. Like a true alma mater, the association will give you the opportunity to grow. Should you have an idea that is not met by our established committees, the CBA will give you the chance to structure and program a new committee. Opportunity is here for the taking. All you have to do is be active and involved.

We don’t have a mascot or an association song, but the Columbus Bar is an institution of learning. Formal learning through our CLE. Informal learning through committee involvement. For a new attorney the networking, educational and social programs are second to none. As you move through your professional life, the committee work, leadership rules and opportunities to effect change abound.

One of my favorite Bob Dylan lyrics comes from “Like a Rolling Stone.” It is “You’ve gone to the finest school all right, Miss Lonely, but you know you only used to get juiced in it.” Well, the CBA is the finest local bar association in the land. But like any “school,” it is up to you to take advantage of what it has to offer. Do not waste the opportunities that await you. Come, be active, be involved. Help the Columbus Bar be your professional alma mater!
By Jill Snitcher McQuain

Some of you may know that I am somewhat of a fitness geek (some might say a teeny bit maniacal). I enjoy various forms of cross-training and weightlifting. In the past few months, I have stepped up my training substantially – trying mostly to get through a plateau and ignore my age. A common chant I often hear in various training classes is “engage your core.” I have come to appreciate that, if you really concentrate on engaging your core, you can augment the strength in your legs, hips, and arms with remarkable returns.

For me, my fitness regimen is as much about mental health as it is about physical health. It is my time during the day to clear my head, which (ironically) makes me think even more. During these sessions of intense concentration and contemplation, it occurred to me that “engaging your core” has meaning far beyond the gym. By engaging your core, you are much stronger – whether it’s physically, mentally, or professionally. Think about what your core strengths are (beyond your abs), focus on them and you, too, will be stronger for it. And, so will your career.

The Columbus Bar has spent a lot of time over the past year focusing on its core strengths throughout the Long Range Planning Process. The Board has devoted significant attention to deciding what our core strengths are – gone are the days of trying to be all things to all people. Indeed, it is a valid exercise to focus on what we do well and how we can do it better.

We didn’t just ask ourselves what we’re doing right or wrong. We went out to the legal community at large, talking with lawyers, judges, court personnel, law school deans, and even some public constituencies. And, we heard from national consultants. While we learned a lot through the process, we also appreciated hearing how much the legal community respects the bar association and what we do. In some ways, it was reinforcement that we’re heading in the right direction.

In the end, it comes down to vision. The role of the Columbus Bar is to be a key partner in the professional success of legal professionals – lawyers, judges, paralegals, and law students. By focusing on this core constituency, we will become stronger, and we will make our legal system stronger. (The final Strategic Vision is available on our website.)

The Columbus Bar leadership understands that a long range plan is not shelf-paper. It is a guide for fulfilling its fiduciary obligations to its membership and ensuring the overall strength of the organization. It is something we will have to concentrate on to make sure we remain strong, both organizationally and financially. It, and you, are our core. If we engage our core, we, as an organization, will be stronger for it.

And yet (to invoke another fitness adage), sometimes you need a spotter. Even when you may be engaging your core and giving it your all, you just can’t quite seem to get through those last few reps. When your strength gives out, so does your form, and that’s when mishaps occur. A spotter gives you that extra edge you need to hit your goal without calamity.

Even though we might be giving it our all at the CBA under a seemingly well-guided path, our form could suffer, and we may need a spotter. Feel free to step in and give us a hand and we’ll do the same. If you find you are having trouble reaching that next level, call us. That’s why we’re here.

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1. The definition of “Long Range” has admittedly changed over time. With the advent of technology, volatility in the marketplace, and generational distinctions, forecasting more than three years out is difficult, if not dangerous.
The Interview

By Ali Haque

From the author: Steve Nolder made national headlines earlier this year when he resigned his position as the lead federal public defender in the Office of the Public Defender for the Southern District of Ohio. He did not make headlines because he resigned, but because of his rationale for doing so. Mr. Nolder explains his reasoning, and his new career with Scott & Nolder Law Firm, in his own words below.

“I am a lawyer. I mean that is one thing I never lost sight of whenever I was in a federal office. I was in a manager role and you wear two hats – you wore a hat as a manager and a hat as a lawyer and I always wanted to wear that lawyer hat first. I never wanted to be a manager or bureaucrat or anything like that.

I don’t really like heroes because I don’t really think anyone is so perfect that they are entitled to that status. You know, you certainly would always like to be Gregory Peck in To Kill A Mockingbird. I mean, what trial lawyer wouldn’t want to be Gregory Peck?

You are sitting across the desk from the luckiest guy in the world. And I have been able to run into people throughout my life that really were transformers in my legal career in ways that I must only imagine.

The fellow with whom I am in a partnership now – I walk in as an undergraduate at Ohio State not knowing what the hell I wanted to do with my life, and he was a professor of criminology at Ohio State. And so I walk into this criminology class, a survey-level class, again more intrigued with the concept, not knowing what it is, and he teaches this class with a dumbed-down case for undergraduates and using the Socratic method. And in an undergraduate class he is pulling your name out of the box, and he engages you in Socratic dialogue and that just fascinated me.

For one of those classes, I externed down at the Franklin County Adult Probation Office…. I was wanting to go to law school, and the fellows for whom I externed knew that, and they were aware of this very high-profile criminal trial that was going on. I went and watched that trial for a week and it was Paul Cassidy and Bill Meeks representing the lead defendant. And I watched that unfold and from that I knew I wanted to do that type of work. I knew I didn’t have the capacity to do that – I knew I didn’t have the tools to do that and so I ended up going to Capital Law School.

At the end of the first year I was broke and I needed to get a job and so I went and looked for a job and who was hiring but Paul Cassidy and Bill Meeks. A full circle. So I go to work for them and I work for them for three and a half years and I learned more about practicing law than most lawyers could imagine. I was ready to practice law as a lawyer when I got out of school. From there I was a sole practitioner for eight years. Worked for the defender’s office for 18 years and the guy that I hold responsible for whetting my appetite in criminal law is now my law partner. How lucky can you be?

It is a work in progress to go from one office for 18 years to starting at Scott & Nolder Law Firm on July 15. I formed a partnership with Jeff Scott and he has been very good to me and he has been very understanding about the things that I have gone through – and I am going through in leaving the defender’s office – but it is something that I don’t want to forget. It is something that I hope makes me proud.

When I took over the lead in the defender’s office, my goal was to hire good people, give them the tools to succeed, be there, be available to help them if they...
needed it, but don't micromanage them. And so that was my management style. And whenever I would hire somebody new – to get along with me was pretty easy.

One: Be at work on time. Two: Don’t lie to me. And three: If there is anything that I can do to help, my door is open; come to me and we can get through this together.”

In the spring of 2013, Attorney Nolder was faced with the unenviable task of cutting 11% of the budget from the defender’s office. His hand forced by the mandatory cuts from sequestration, Mr. Nolder’s ultimate solution to the budget problem made national headlines.

“One school of thought would be that the last people in are the first to go. In other words, the most recently hired are the first that you fire – and there are lot of people that feel that that is the proper way to approach the problem. And I certainly looked to solving the problem in that way.

One of the things that troubled me the most was whenever I looked at those people – which would probably be about the last five lawyers that I had hired – there was a common thread in the fabric, and the thread would be that all of those people were very, very good lawyers. And none of them came to the office from Ohio. They all came from outside of the state of Ohio…they had been practicing in federal court exclusively and they did not have to be a member of the State of Ohio bar. And so whenever I looked at eliminating their positions, I thought about what could become of them if their jobs were eliminated.

I looked at the options I had in the Columbus legal market, and I figured that based on the reputation that I had developed – and my level of practice of law – that I had far more options available than they did. So I decided I would avail myself of the option of leaving, in hopes of at least helping the office to survive.

You can only ask so much of somebody if you are not willing to give to them as the manager. So for me, it just seemed unfair if I had options that they didn’t have – that I would be so selfish to simply eliminate their positions knowing that I could leave and hopefully they could continue to thrive and survive in the office.

Right now it is very uncertain as far as what the defender’s office is going to look like. Right now they have appointed the defender from northern Ohio to be the acting defender. And there is some room for some discussion as to whether or not the two districts would be combined under the public defender system if we were only having one manager over all of Ohio.

I don’t know that it is workable, because if we had one person right now based in Cleveland who would be responsible for managing offices in Toledo, Cleveland, Akron, Youngstown, Columbus, Cincinnati and Dayton – that’s an undertaking. Ultimately, however that plays out is a circuit decision.

Right now for fiscal year 2014 they are talking about cutting the budget another 22% in addition to the cuts they have already signed off. That’s pretty substantial. It’s tragic.

The mission of the defender’s office is to provide effective representation to those who are indigent. The mission won’t change.

The public defender’s office – their mission is to provide services for the damned – for people that the public would rather forget about. But yet, our constitution says you cannot forget about them. The constitution says you have to provide these folks lawyers when you are going to take their liberty.

One of the things I fear is that the target of this sequestration, intended or not, would be services that indigent people rely upon…. Why are they depriving indigent people who need lawyers when they go to federal court to not be provided highly trained lawyers?

It is going to take people to grow up in Congress, it is going to take people who care about what the fabric of our nation means that stand up and say “No, this isn’t right. We’re going to have an adversarial system of justice; both sides have to be properly funded.”

I gave probably a 90-days’ notice to the circuit court of appeals of my decision and the last 90 days were – it was like dying a slow death and you knew that at the end of June you were done.

I had a lot of cases that I was responsible for that I didn’t want to dump on the lawyers that I was leaving in the office so I needed to get through those things – work through those cases as much as I possibly could by the end of June.

My practice here is still criminal law, that is all that I know to do but you know I mastered something. I mastered something. And that was practicing in federal court…. I need to master an entirely different domain and that is state practice – and that will come.

The actors in state court that we have in the federal court system and the criminal justice system whether it is the U.S. Attorney’s office, whether it is probation, pretrial, the clerk’s office, the judges, you have really, really good people across the board that care about outcomes and care about the process and procedure and I miss not having my hand in that to the extent that I had.”

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By Ali Haque,
Bricker & Eckler
JUSTICE SCALIA WAS RIGHT!

By Michael L. Corey

That’s one incontrovertible lesson I’ve taken from law school. Never mind his Originalism, Justice Scalia was right about something far more important.

Perhaps as penitence for his public put-down of the University months before, when he wryly mocked his hiring of Jeff Sutton as a law clerk from a non-Ivy League school – “For God’s sake, he went to Ohio State!” – Justice Scalia visited the Moritz College of Law in November 2009 to offer his insights into anything and everything about which he might have an opinion. Having already opined with his Originalist take on race-conscious policies, campaign finance and the judicial branch’s role in times of war, the most dazzling legal writer of his generation was posed a simple, jurisprudence-free question: How can I become a better legal writer?

Like his legal approach, the Justice explained, his answer was simple. Read. Read everything worthy of reading. Read the news. Read poems. And read books – especially books. Read history, read biographies, and read novels. Especially novels. And through all that you read, he insisted, you will learn how to better articulate that which you mean to say.

As a nascent attorney approaching my first anniversary in the profession, I gladly concede Justice Scalia’s point. But sadly, I confess to not reading enough myself. I suspect that most of us have the conviction to read more, and that most of us would be convicted for failing to follow through.

In the unending pursuit of equilibrium between work and family and everything else, recreational reading often gets squeezed out. I’d suggest, however, that this poses more than a hindrance to our harnessing of the English language in our profession; it poses a hindrance to our development of humanity as lawyers.

“We’re talking in favor of a broad version of education that arches from the sciences to the humanities that starts early and continues all the way through people’s lives,” recently explained Richard Brodhead, the president of Duke University and the co-chair of a recent report on the importance of an education in the humanities. “That’s what gives people the full set of equipment they need for employment, for personal pleasure, for all the things that education is meant to supply. Lawyers are surely supplied with a host of skills, cultivated and harvested regularly in respective practices of law. And we use those skills to displace skills that we assume we have no use for in the workplace. Grief, for example, is but a nuisance. Rather than cope, we rationalize our way to an abbreviated bereavement and plow through the pain. After all, tragedies care not for billable hour requirements. The world must go on, and so too, must lawyers.

And yet, finding the proper balance between attending to grief while attending to one’s job is a lesson that cannot be found in legal treatises, but in the writings suggested to us by Justice Scalia. “Coping” is a skill that will never appear on a resume, but that is needed often throughout the trajectory of a career. It is identifiable to colleagues and clients, in work product and work relationships; it is a skill that may not be marketable, but that is indispensible. Treating grief as a mere distraction will only make it more so: ignored, grief will only fester into something out of one’s control.

That lack of control is precisely why I suspect lawyers tend to struggle with tragedy. We are trained to be in control, and refuse to cede it. Faced with a divergence in the woods, we follow the downtrodden path, because that is what our profession requires. I humbly suggest that prose and poetry can help us do more along the way than better articulate our wits as Justice Scalia suggests, but to keep them.

The medical profession has caught on to this phenomena, with dozens of medical schools and a growing number of medical professionals embracing prose and poetry in their pedagogy and in their patient rooms. I’m confident these lessons could apply with similar force and beneficial effect to lawyers.

A dear friend and fellow attorney was recently beset by tragedy, and I have tried steering him toward lessons I learned in 2005 when my father passed away. Though I gratefully accepted the embrace and condolences that came from caring people around me, it was in reading and writing that I found the steadiness I needed to plow through my daily duties, then as a senior in college. I found solid ground in words and stories, words and stories I leaned on to articulate something – if only to myself – of depths of grief I’d yet to fully understand.

Toward the end of that school year, I had the chance to introduce myself to the University president, Richard Brodhead. “My mother and I recently received a letter from you, offering your condolences after my father’s death. I just wanted to let you know how much we appreciated you going out of your way to do that.” President Brodhead gently placed his right hand over my heart. “This is part of your education. Learn from it.”

An understanding of the tragedies that enter our lives is a lifelong pursuit, as is the practice of law. The two will inevitably intertwine, too many times over. Whatever skills and tools are at our disposal as practitioners of the law, reading is one pursuit that can help us grow as lawyers while navigating the storms that come our way.
Anthony Lewis – a role model

By Janyce C. Katz


Lewis’s clear, eloquent style of writing, and his ability to convey his knowledge of the law allowed him to write articles about cases that made the facts and law of the case come alive. In his hands, law became interesting and understandable to non-lawyers. His analysis of legal issues and cases went beyond news articles. Besides Gideon’s Trumpet, he traced the history of the First Amendment in two other books, Make No Law: The Sullivan Case and the First Amendment (1991, First Vintage Books), and Freedom for the Thought We Hate (2007, Basic Books). He traced the history of the civil rights movement in Portrait of a Decade: The Second American Revolution (1964, Random House), and wrote a children’s book explaining how the U.S. Supreme Court works.

In addition to his books, he authored law review articles analyzing constitutional issues. From 1970 until 2001, the New York Times ran his Op Ed column, “Abroad at Home.” He was knowledgeable about art, culture and politics and wrote extensively about those subjects especially when he was London Bureau Chief for the New York Times.

Lewis could explain a case so the average newspaper reader could understand the issues, and he could describe why, at least in his opinion, the result of a legal action was significant. One significant example is the case against Abraham Chasanow, a civilian employee of the Navy who was dismissed from a position he had held for twenty-three years, based on complaints of anonymous sources.

Lewis’s articles in the then-existing Washington Daily News described the Navy’s charges against Chasanow, that he attended a party to raise money for victims of the Spanish Civil War and that his leadership in an organization in a Washington, D.C. suburb in which he lived, meant he was leading radical groups. Chasanow, a lawyer, was not given a fair chance to confront the charges. Lewis’s articles and other publicity on the decision to fire Chasanow led not only to the Navy’s decision to reverse the dismissal, but to an apology to Chasanow. The Heywood Broun Award of the American Newspapers Guild in 1954 and Lewis’s first Pulitzer Prize in 1955 were awarded to Lewis for his series on Chasanow.

The second Pulitzer Price came to Lewis in 1963, based upon his reporting on the Supreme Court case Baker v. Carr, 369 U.S. 186 (1962) that held redistricting was a justiciable, not a political issue. As a side note, in footnote 27 of the Baker opinion, the Supreme Court cited a Harvard Law Review article of Lewis’s on redistricting.

In 1991, when President Clinton awarded Lewis the President’s Citizen’s Medal, the citation on the medal summed up Lewis’s career not only as a journalist, but as an advocate for the constitution. The citation described Lewis as a “staunch defender of freedom of speech, individual rights and rule of law,” and a “clear and courageous voice for democracy and justice.”

In the days following his death, writers noted that Lewis had revolutionized the manner in which journalists reported cases and legal issues. Nina Totenberg from NPR, Lyle Denniston from the Baltimore Sun, and Jeffrey Toobin, The New Yorker and CNN, have used a similar journalistic style to inform the general public about legal issues, conveying to them the importance of an issue, case or law. Laurence Leamer, a journalist writing for magazines (New York Times Magazine, and Newsweek) used a style similar to turn a case against Don Blankenship into a book as exciting and well-written as any spy novel or murder mystery. (Blankenship, former head of Massey Energy, purchased the vote of a West Virginia Supreme Court Justice.) The Price of Justice: A True Story of Greed and Corruption (2013, Times Books, Henry Holt and Company, New York).

The clear writing style that Lewis brought to describing cases and law in newspapers has also impacted on the way lawyers write legal briefs. Compare what was a standard style in a brief to today, where the best briefs are written so a non-lawyer can understand the argument, the law, and the facts.

Legal writing experts stress clarity, something in which Lewis excelled. To name one famous example, Bryan A. Garner, the editor of Black’s Law Dictionary, joined Supreme Court Justice Anton Scalia as author of several books advising lawyers how to make briefs and arguments in courts clearer and more understandable. In his article in the August 2013 ABA Journal, “Grinding the Ax for Clarity,” Garner describes his involvement in the process of redrafting the Appellate Rules, Criminal Rules and Rules of Civil Procedure as part of a special subcommittee of the U.S. Judicial Committee on Rules of Practice and Procedure. The goal of the subcommittee was making the rules clearer, easier to understand, and easier to follow.

Lewis’s decidedly “liberal” point of view, his description of the Warren Court’s cases that opened doors and solidified rights for the underdogs of society, were not popular with everyone during his life. Former Secretary of State Henry Kissinger is reported to have said that everything Lewis wrote was wrong.

In our decidedly more conservative era, would Lewis have still been awarded two Pulitzer prizes for his articles about cases? Certainly, the worldview during the times of the Warren Court allowed Lewis’s ideas to flourish. That era gave birth to civil rights and expanded constitutional protections for many.
Lewis left a legacy of clear writing that allows anyone who can read to understand the thoughts of the writer. This style of writing should be celebrated, whether or not one agrees with the opinion of the author. Lewis immersed himself in the law, knew it backwards and forwards, and then was able to explain a case in a clear, concise, interesting manner. His lyrical style as well as his worldview is captured in a few sentences from his obituary for Abraham Chasanow, in an “Abroad at Home” opinion published in the New York Times on June 15, 1989. “Any society, however committed to law, has to be reminded again and again that it is deadly to reach conclusions with secret, untested evidence.”

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A QUICK REFERENCE GUIDE to Citations in the Supreme Court of Ohio Writing Manual

By Jeffrey A. Willis and Marisa Bartlette Willis

The Supreme Court of Ohio Writing Manual (“Writing Manual”) was adopted and released by the Ohio Supreme Court in 2011 (effective January 1, 2012) as a comprehensive guide for its use in writing judicial opinions. It was updated as a second edition in 2013. The proposed citation formats contained in the Writing Manual are based on several factors, including whether the judicial decision was issued before or after May 1, 2002, whether the decision was published in an official reporter, and whether a WebCite is available. The Writing Manual also has several new changes to citation formats including the identification of district courts and, perhaps the biggest change, placing the date of the decision at the end of the citation.

Although not mandatory for lower court judges and lawyers, the Ohio Supreme Court strongly encourages the use of the Writing Manual for writing opinions and briefs in Ohio courts. The committee drafting the Writing Manual produced an excellent, easy-to-follow guidebook that provides detailed instructions and examples of almost every citation used by judges and attorneys. It also provides writing tips, a listing of commonly used abbreviations, and guidance on structuring opinions. Every Ohio practitioner should keep a copy of the Writing Manual in their personal library for drafting assistance. We reference the Writing Manual for every brief, pleading, and legal memorandum we write.

Because of its comprehensiveness and the number of citation illustrations contained in the Writing Manual, we found ourselves constantly flipping back and forth between self-tabbed pages. As a solution, we created the following one-page summary of citation formats as a quick reference tool for the more common Ohio citation formats. It has become an invaluable, time-saving tool to our legal practice and has helped us be more consistent in writing opinions and briefs.

We have attached the reference guide to this article. Please feel free to use it. As a disclaimer, the Writing Manual is very comprehensive and the attached summary of citation formats only skims the surface of the Writing Manual’s guidance and direction. Please make sure you reference the actual Writing Manual as the final authority on submitting filings in Ohio courts. The entire Writing Manual can be viewed online here: http://www.supremecourt.ohio.gov/ROD/manual.pdf.
Quick Reference Guide to Citation Formats in the Supreme Court of Ohio Writing Manual

I. CI\VIL RULES. Supreme Court of Ohio Writing Manual 47, 49 (2d Ed.2013).
   Examples: Civ.R. 12(B)(6); Fed.R.Civ.P. 60(b)(1)

II. LOCAL RULES. Supreme Court of Ohio Writing Manual 48 (2d Ed.2013).
   Example: Loc.R. 13.01 of the Court of Common Pleas Stark County, General Division

III. RULES OF APPELLATE PROCEDURE. Supreme Court of Ohio Writing Manual 47, 49 (2d Ed.2013).

IV. RULES OF EVIDENCE. Supreme Court of Ohio Writing Manual 47, 49 (2d Ed.2013).
   Examples: Evid.R. 801(d)(1) and 803(1); Fed.R.Evid. 804(b)(2)

V. STATUTES. Supreme Court of Ohio Writing Manual 41, 43 (2d Ed.2013).
   Examples: R.C. 4511.55 and 4511.56; 45 U.S.C. 151 et seq.

VI. REGULATIONS. Supreme Court of Ohio Writing Manual 49-50 (2d Ed.2013).
   Examples: Ohio Adm.Code 123:5-3-06 et seq.; 46 C.F.R. 16.115(b)(1)

   Supreme Court of Ohio case example:
   Print published case examples:
   Non-print published case examples:

   Ohio Supreme Court case example:
   Doe v. Ronan, 127 Ohio St.3d 188, 2010-Ohio-5072, 937 N.E.2d 556, paragraph one of the syllabus.
   Print published with WebCite available case examples:
   Mattlin Holdings LLC v. First City Bank, 189 Ohio App.3d 213, 2010-Ohio-3700, 937 N.E.2d 1087, ¶ 16 (10th Dist.).
   Teeters Constr. v. Dott, 142 Ohio Misc.2d 1, 2006-Ohio-7254, 869 N.E.2d 756, ¶ 22 (M.C.).
   Non-print published with WebCite available case example:
   Non-print published with WebCite not available case example:
   Mattlin Holdings LLC v. First City Bank, Franklin C.P. No. 09CVH05-8009 (Nov. 10, 2009).

   United States Supreme Court case example:
   Federal circuit court case examples:
   Hamilton Cty. Bd. of Commrs. v. NFL, 491 F.3d 310, 317 (6th Cir.2007).
   Federal district court case examples:

X. COMMON SIGNALS. Supreme Court of Ohio Writing Manual 63-69 (2d Ed.2013). Examples: Accord; see also; cf.
The evolution of technology has changed the way attorneys do business, yet the waters have been muddied by debates over proper and ethical uses of that technology in carrying out their responsibilities. A recent opinion from the Ohio Supreme Court Board of Grievances and Discipline has offered some clarity on the use of technology, specifically as it relates to the solicitation of clients. In August 2012, an attorney’s teenage daughter was a passenger in a car that hit another from behind. Less than 24 hours later, the teenager received a text message solicitation from a local attorney suggesting she may need his services. Incensed by what was perceived as an improper communication, her parent sought guidance from the Board. Recognizing that perhaps the Ohio Professional Conduct Rules lagged behind technology, the Board asked for a formal request for an advisory opinion on the issue: May Ohio lawyers use text messages to solicit professional employment from prospective clients? On April 5, 2013, the Board issued Advisory Opinion 2013-2 entitled, “Direct Contact with Prospective Clients: Text Messages.”

The short answer is, yes. Lawyers may advertise their services through SMS text messages, that are written and/or electronic communication for purposes of Prof.Cond.R. 7.2(a). The message must comply with Prof.Cond.R. 7.1 and 7.3. The text must not contain a false, misleading, or nonverifiable communication about the lawyer or the lawyer’s services. Prof.Cond.R. 7.3 imposes five additional requirements that apply to text message advertising by lawyers:

- The text message cannot create a “real-time” interaction similar to an internet chat room;
- The text message may not involve coercion, duress, or harassment, and the lawyer must abide by a person’s request not to receive solicitations;
- If the lawyer has a reasonable belief that the prospective client is in need of legal services in a participate matter, the text message must state how the lawyer learned of the need for legal services, include the language “ADVERTISING MATERIAL” OR “ADVERTISEMENT ONLY” at both the beginning and ending of the message, and cannot offer a case evaluation or prediction of the outcome;
- If the prospective client is a defendant in a civil case, the lawyer shall verify that the person has been served; and
- Text message solicitations sent within 30 days of an accident or disaster must include, in the body of the text message, the entire “Understanding Your Rights” statement contained in Prof.Cond.R. 7.3(e).

**Text Messages are Not “Real-Time” Typically**

The Board found that a text message solicitation of a prospective client is not an in-person communication, and although it may be initiated with a cellular phone, would not ordinarily be considered a “live telephone” conversation. The Board’s view is that a standard text message is more akin to an email than a chat room communication. Accordingly, a typical text message is not a “real-time” electronic contact. However, lawyers must ensure that the technology used to solicit clients using text messages does not generate a real-time or live conversation. In addition, because most text messages are received on cellular phones, which are often carried on one’s person, lawyers should be sensitive to the fact that a text message may be perceived as more invasive than an email.

**“Understanding Your Rights” Statement**

The Board expressed concern that due to the limited number of characters available in a standard text message (typically 160 characters), including the entire “Understanding Your Rights” statement may cause the message to be split into multiple messages; or worse, fail to transmit in its entirety. The Board found that including an internet link in the message
Three Things to Consider Before Soliciting a Potential Client By Text Message

The Board identified three practical considerations for a lawyer who chooses to directly solicit prospective clients using text message. First, the text message should not create a cost to the prospective client. Because not every service plan includes free or unlimited text messaging, and significant cost may be incurred if the recipient is traveling internationally when the text is received, unless the lawyer can verify that a text message solicitation will not result in a cost to the prospective client, the lawyer should use “Free to End User” or similar technology by which the initiator of the message is responsible for the cost of both delivery and receipt. In other words, one should not pay for the privilege of receiving the solicitation.

Second, the lawyer should consider the age of the recipient of the text message. Lawyers who obtain phone numbers from police or accident reports should attempt to verify that the numbers do not belong to minors before sending a text message solicitation. Although Prof.Cond.R. 7.3 does not explicitly prohibit the direct solicitation of minors, the Board discourages it. The Rules Committee has been asked to consider proposing an amendment to the Rules of Professional Conduct that would address direct contact with prospective clients who are minors.

Third, before a lawyer solicits a prospective client using text message, the lawyer should carefully scrutinize the message and delivery mechanism to ensure compliance with all applicable federal and state laws, rules, and regulations pertaining to telemarketing laws. This may include consumer protection rules prohibiting the number of text messages sent by an autodialer to a cellular phone, the federal CAN-SPAM Act, and the requirements to abide by the federal “Do Not Call” provisions.

Back to the Future

Based on Advisory Opinion 2013-2, the lawyer who solicited the teenager failed miserably in his ethical obligations. While the message contained a statement that it was a solicitation, and identified the lawyer sending the message, the entire “Statement of Your Rights” was not transmitted. And, remember – the text message was sent within 24 hours of the accident. Despite the fact that teen’s age was listed in the box right next to the telephone number, the solicitation was sent to a minor without even seeking the opportunity to communicate with a parent or guardian. The lawyer did not know whether or not the text would result in a cost to the recipient. But, in all fairness, he may have used “Free to End User” or similar technology. The number where the solicitation text was sent is listed on the federal “Do Not Call List.”

The Board opined that while text messaging may be a novel approach to client solicitation, their ethical review was actually a straightforward application of the Rules of Professional Conduct. Here’s hoping that most lawyers are making better application of the Rules than the one encountered by the attorney’s teenage daughter.

Charles E. Ticknor III and Nita Hanson, Dinsmore
The Columbus Bar has an attraction to South Third Street that rivals the bond between a pair of Scotty/Westy dog magnets. It has not been able to bring itself to leave this hood – at least for the last three-plus decades.

“66” was the first CBA locale on the Street in the modern era (i.e. after this Dayton boy stumbled into Klumbus). It may well be – given the Bar’s peripatetic history of in the years stretching from its contrivance in 1869 – that it was previously situate someplace(s) on Third in times forgotten.

The “66” offices were on the second floor of a bank building (still standing, but vacant). As a sapling lawyer unaccustomed to the trappings of affluence, I thought that “66” was lavishly furnished and wastefully spacious – as betokens the headquarters of a well-healed corporate entity. Lagusch and Smithberger took over the Bar’s tiller at “66” in ’77. They (and the Board that guided them) were destined to seal our affinity with this patch of pavement with two more moves up and down the street.

In the early ’80s, movers arrived to wheel the CBA’s stuff and staff two doors north to “40,” a building generally known for its top floor occupant, the University Club. Being next to the Wolfe’s Dispatch headquarters, a short distance from the Athletic Club and the Columbus Club, with the legislature and the Supreme Court close at hand, the Columbus Bar was now entrenched in the haunts of the elites – at the very confluence of commerce and command. The more important proximity, however, was to the fine vittles upstairs at the UC.

One cloudless day, I looked from my office at “40” and saw a helicopter hovering low next to the building and turning slowly in circles as if to absorb the views from every angle. That bit of reconnoitering, we were soon to learn, was in aid of a project to raze the very building from which we observed it. The plan was to build a high rise there to accommodate, among other things, a well-known law firm, and staff two doors north to “40,” a building generally known for its top floor occupant, the University Club. By Bruce A. Campbell

As a bonus for having endured the arduous journey to the odd side and the disorientation of unfamiliar surroundings, staff members were treated to the ever-fascinating construction process as the Center took shape. It is after all, more fun to watch work than do it. Of course, many a staff paycheck would soon be vacuumed into the mall peddler’s coffers.

Eventually, the City Center suffered its drawn-out, inglorious winding down leading to its demise and destruction. On the compensatory side, however, the tearing-down process was even more exciting to watch than the building-up had been, and there was much less competition for parking spaces.

At lease re-up time in 2005, a tenant improvement allowance allowed the Bar to resparkle and reconfigure Suite 1100. The courtroom shrank and other meeting rooms expanded. Accounting got much-needed extra space. AV and other technology underwent improvement. Carpet and décor changes occurred. Alex was in his office; all was right with the CBA world.

Despite initial misgivings of some, the Columbus Commons transformed the Bar’s back yard into a showplace in every sense of the word. It draws hoards of folks daily with gardens to enrich them, amusements and music to cheer them and flocks of food trucks to feed ‘em. What other bar association has an outdoor patio like that?

As with the “s” stuff, Change Happens. Bar associations are not immune to the inexorable urge to rejigger. In 2012, with a new and very-much-in-house landlord, Dannos Tiano, taking over, the earth under and around “175” began to shift and shake. Danny, a gregarious and affable Greek, bought the building with a view to making it his showplace, not just another building. He renamed it, fittingly, “175 on the Commons.” He set about to fill it (even in a down market) with long-term tenants, and so has he done. As enticement to the CBA to extend its lease, Danny offered an extremely generous improvement allotment and favorable terms. The Bar leadership – after due diligence in examining other options with the guidance of a broker – concluded that a ten-year lease extension was in the organization’s best interest. So, here we are on South Third Street for yet another decade.

This time, staff did not have to look out the windows to find diversion; the demo and construction happened – more or less simultaneously – right under, over and around us. At this writing, the work is shaping to the point we can envision the final product and begin to believe that it will all come together somewhere near the “target date” (which anyone ever involved in construction will understand to be a fluid, if not vaporous, concept). Danny’s talented and dedicated tradespeople are working harder than a Mississippi River sandbagging crew with flood waters rising.

Not wanting to buzz-kill the end of this tale, I will just say that we think our members will cotton to the newness, flexibility and general aura of your spruced-up “Friendly Neighborhood Bar” – here, as ever, on South Third Street.

Bruce A. Campbell, Columbus Bar Counsel

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Commons Law

By Bruce A. Campbell

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Life Skills Learned Through Video Games

By Aaron L. Granger

Raising a young teenage boy presents a multitude of challenges. Especially when that teen is going through a physiological metamorphosis and fails to use the appropriate executive skills necessary to successfully complete even the most mundane tasks. Techniques to help boost these executive skills are discussed in a useful parental survival guide Smart but Scattered by Richard Guare and Peg Dawson. I recently encountered this smart but scattered phenomenon when cross examining my son about why teachers alleged that he failed to complete a number of assignments. With exaggerated incredulity he proclaimed that the evidence would exonerate him of these scurrilous accusations and he would be found “innocent” of all charges. I responded that the best he could hope for was a finding of “not guilty” because in my house, as with the criminal justice system, a finding of “innocent” is not available.

He painstakingly combed through his backpack that was so stuffed it look like it was having contractions. One by one he presented a quintuplet of dittos, his smile widening with each delivery like a proud father bearing witness to the miracle of life. His smile dimmed as I pointed out that none of the documents he produced contained the typical chain of custody markings that would suggest that the assignments had actually been in the possession of the examiner. “Well, I meant to turn it in.” He said squeamishly. I replied, “You can’t raise a mens rea type defense, son. Failing to do your homework is a strict liability offense.” We spent the next few minutes developing arguments for an appeal.

Despite being admonished by several family members not to talk “at” them like a lawyer, I irrepresibly deploy my professional skills when trying to win an argument or use the power of persuasion. My son has largely been impervious to my argumentative idiosyncrasies because I have refused to allow myself to view the world through his lenses. Instead, I have insisted that he view and understand the world through the eyes of someone thirty years his senior, and with the expectation that he do so without the benefit of experience to provide context. However, this time was different. I could not use my usual approach. I needed him to understand that completing work and turning it in would be the core function of his educational life and professional future. This time, to build my case I did not pore over my personal collection of self-help manuscripts. I turned to video games.

I have personal knowledge of my son taking over hostile terrain using violent weaponry in the video game series Call of Duty. Admittedly, I have assisted him in mounting several campaigns protecting our homeland and defending the very democracy that allows me to earn a living in a society governed by the rule of law rather than by a bald dictator with a pencil thin mustache, goatee, and a Russian accent. In the multiplayer mode the goal is to complete various missions. At the end of each successful mission you receive a star. You have to collect a specified number of stars before the game will unlock the next series of missions. The player can also select the degree of difficulty. Raising the level of difficulty allows you to accumulate more stars per mission. The game is designed so that it is impossible to advance to the next level simply by completing the missions using the easiest degree of difficulty. This ensures that the players will not graduate until they have proven beyond a reasonable doubt that they possess all of the necessary skills to advance.

I used this gaming theme in my opening argument. “Complete the mission. Collect the stars. Advance to the next level.” Using Call of Duty as my analogy I explained that completing the mission involved not only doing the work but turning it in. I warned that repeated failed missions could result in him starting the game over from the beginning of the last successfully completed level. Completing the missions successfully also had the added bonus of upgrading my son’s armor and available munitions making him a more formidable and battle tested competitor anywhere in the global arena regardless of the nature of the combat in the future. I agreed to the authenticity of his statement that some of the missions are “extremely hard” without waiving objection to the admissibility of his statement into evidence. I also attempted to introduce evidence that my son enjoys a significant feeling of accomplishment when he is able to prevail over difficult obstacles but that was excluded as hearsay (even though it clearly should have been permitted under the excited utterance exception).

In my closing argument I repeated my opening theme four times in a chant like fashion getting louder each time. “Complete the mission. Collect the stars. Advance to the next level.” Interrupting my son smiled and said “Okay Dad, I get it!” His reluctant smile provided me with validation that at least I was connecting with him in language that he could understand. Will that change behavior? Who knows? The jury is still out or should I say the game is still loading. The way I see it, if the father/son pep talk doesn’t work, I can always take the video games away! As for me, I feel like I’m on a roll. Tomorrow I’ll be teaching my daughter the value of patience using the video game Frogger.

Aaron.L.Granger@exel.com
I often feel like Wonder Woman. In the morning, I leap into the duties of a powerhouse litigation attorney, armed with the bangles of justice and equality on each wrist – anxious to take on any legal issue that may come my way. I slide into a sleek black suit, toss my hair into a power bun, and grab my briefcase. I navigate through the complexities of the legal system with the intent of rescuing my clients from whatever giants they may face.

But when night falls, I let my hair down, put on a soft, cotton gown, fuzzy slippers and transform into the comforter that makes tough days in second grade seem like a distant memory. I am a master chef, professor, hair stylist, story teller and lullaby singer – all of the things that growing little ones need.

When I discovered this duality, I embraced it freely and was amazed at all I could accomplish in a single day. Much like Spiderman when he discovered his Spidey Sense, I was in awe of what I could endure mentally and physically, marveling at my ability to complete multiple tasks in a single bound. But just as the sweet taste of superhuman power turns bitter when the responsibility involved becomes a reality, I too began to discover that my powers came at a cost.

The first sign was the mental exhaustion felt when I arrived home after a long day of work. I had absolutely no desire to cook, clean, or read a single thing after spending hours reviewing documents. This posed a major problem when my eight-year-old son asked for help with homework or my five-year-old daughter asked the age-old question, “What’s for dinner?”

Guilt from lacking the energy to complete the duties I had previously fulfilled began to surface. It was like Kryptonite – preventing productivity during the day. I was consumed with downtrodden thoughts of how I failed to adequately complete my task as the nurturer. Then the self-doubt pulled me even lower. I would ask myself, “Can I make this work? Is it possible for me to do both well? Would I be a better mom if I weren’t an attorney? Would I be a better attorney if I weren’t a mom?” Finally, the anger of questioning my own dedication and ability completed my emotional roller coaster. How dare I consider choosing between being a great mom or an excellent attorney? I was pregnant when I took the LSAT, started law school with two small children and passed the bar in Ohio and Florida – surely I can do this – or can I?

After a few months of uncertainty, constant questioning, and what seemed to be the verge of a total meltdown, I decided to talk with other mother-lawyers. My question was simple, “How do I do both well and not go crazy in the process?” I first looked to more experienced mother-lawyers and was dissatisfied with the response.

I asked a senior partner with four children and she responded, “Well, my husband is a stay-at-home dad.” While her response was genuine, it is simply not an option in my household. I was told by another mother of three, “Hire a nanny. You can afford it.” While this solution had crossed my mind plenty of times, I could not fathom the thought of another woman fulfilling the duties I take pride in completing every evening. Furthermore, there are plenty of mother-lawyers who cannot afford a nanny. Another partner shared, “I work until 3:00 am on Friday night so that I can spend all day Saturday with my children.” While this option seemed more practical, I wondered what mental capacity I would have on Saturday morning when my two children ran into my room bright and early, ready for weekend fun. I began to realize that the requirements of this profession, coupled with motherhood, was a drastically different experience for those who began practicing during the nineties or earlier.

I thought back to a sensitive conversation I had with an accomplished partner last year, following the death of our close friend and colleague who died from complications of...
childbirth. She told me, “In my day, you had to choose between either having a family or a successful career.” She tearfully shared the fact that she decided very early in her practice that she would not have children – although her desire to have a family was still very strong. This statement was not a surprise to me. Regretfully, many female attorneys of her generation decide to forego having a family to cultivate, what is considered by many, a distinguished career.

Even in this day and age, many female attorneys working in large firms choose to forego bearing children until the year before they make partner, commonly referred to as their “lap year,” or after they make partner – living in constant fear that they will be penalized for taking maternity leave or missing additional time from work due to bed rest or other complications resulting from pregnancy. I often reflect upon my friend who gracefully and diligently put in her time at the firm and became pregnant during her lap year. I cannot help but question her untimely death and the system that fosters and encourages women to forego life’s natural processes to cultivate an idea of professional success.

But what about those of us who decide that we will engage our right to procreation, livelihood, and happiness on our own terms, in spite of bureaucratic stigmatism and obstacle? What can we do to accept our duality and embrace it? How can we do both well? After all, no one else will appreciate and accept our duality until we do so – unapologetically.

After a few weeks of seeking the opinions of more senior mother-lawyers, I began to ask younger female attorneys who appeared to have it all together. Their response was so practical and sensible that I almost felt silly for asking.

Don’t guilt yourself. A mother of four told me, “You’ll spin your wheels when you think you’re not giving the best that you have.” I tried it and it worked. When I began to accept the fact that I give my best as a mother and I give my all as an attorney, it changed my perspective. Contrary to stereotypical belief, the fact that I am a mother is an asset to my practice and not a detriment. The reality that I live an extremely busy life as an attorney does not discount the fact that my husband and I are raising two healthy, happy children. When I began to accept this fact and remove my guilt, I discovered a new power within myself.

Use technology to your advantage. We are fortunate to have the world at our fingertips. By clicking a button, we can rescue our client from despair with a comforting e-mail, Skype parent-teacher conference, and e-file our Memorandum Contra with the Clerk of Courts—just in time for dinner. Technology has opened up a world of “non-traditional” ways to conduct business. Embrace the freedom it has provided.

Use the help of your support system. A colleague discovered that she constantly refused the support of her husband because of guilt. She thought she could only be a good mom if she attended all of her son’s doctor visits, little league games, recitals, etc. Guilt stemmed from the fact that she could not be in two places at the same time. She jumped through hoops to attend each appointment and complete her professional tasks despite the fact that her husband had a more flexible schedule and had offered to be there. She literally refused his assistance, to her detriment, because she wanted to be omnipresent. When she moved out of her own way, and accepted the reality that her husband was willing and able to support, she discovered she was still a wonderful mother and excellent attorney.

Take care of you. The old phrase, “If Momma isn’t happy – nobody’s happy” still reigns true. If you are not in a good place mentally, it rolls over into every aspect of life. During a women’s initiative meeting at a local law firm, we were asked to share one thing we do outside of work that relieves stress and makes us happy. I had to think long and hard about what my answer would be. Surely, in the midst of accomplishing my dreams, both personal and professional, I have fun. Maybe not the amount of fun I would like – but who has time for fun? This question forced me to find something, outside of my career and family, which brought joy to my life. My happiness now rolls over on a personal and professional level.

While this list is not all-inclusive, it is a start for the mother-lawyers/Wonder Women who are in the process of accepting their duality and striving for better ways to make this system work for them. My hope is that this article sparks an essential conversation that needs to continue in our homes, offices, and communities.

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GETTING INTO THE CLOUD

By Mark Kafantaris

There are many benefits to going paperless, and one of them is that you can actually find your stuff. But how do we do it?

The first thing you need is a good scanner. We use the Fujitsu Scansnap 1500, which comes with both scanning software and the latest version of Adobe Acrobat. Don’t bulk at its small size either – it’s as durable as anything out there. When a mailing comes in, we scan all of its contents. We even scan the envelope itself if it has any significance. The Scansnap knows when a document is double-sided and stops if two pages are stuck together as one. An image of documents appears on the screen in PDF format. As for quality, it is as good as your copier and can even come in color if you so choose.

We can save that imaged PDF file to the client’s folder with a name such as “Opposing Counsel Letter 4-29-13” or we could select certain of the pages and save them under a different name, or put them in different file folders altogether. You may want to spend some time figuring out how you wish to organize your electronic files, much as you did at one time with your paper files.

Going paperless is really as simple as that. But what you can do with it is enormous. Gone are the days when you spend half a day looking for a letter within a file. Now, the entire file is nicely organized on your computer. You can search for a document by date, name or whichever other method you use to label and organize your files. You can even search text within the scanned files themselves! Your assistant and partner could do the same thing from their desk. And if you back your files up with Dropbox or any other cloud syncing service, you could look at your files from home, the library or even the courthouse. Yes, you could review a file – any file – right there as you are waiting for your case to be heard.

Moreover, if you need to attach any of the scanned documents to an email, they are already available in the electronic folder, making the job easy. The same is true for faxing – and you don’t even need fax machine. You could use a cloud fax service like RingCentral or E-Fax to send and receive faxes as an email attachment. You can even send and receive faxes from your smart phone or tablet.

Whether we like it or not, the paperless office is no longer an option. Both the Franklin County Common Pleas Courts and the federal courts now require electronic filing. Working with PDF documents is therefore a necessity. But it is not that big of a deal. Instead of printing the document to a paper printer, we now simply save as PDF and file the document electronically with the clerk. As for signatures, “/s/ Able Lawyer” is sufficient.

And if you feel insecure about having only electronic images of documents, you could continue to print them. You may have to do so anyway to keep the client informed – a habit that always helps in getting us paid. Beware, however, that clients can check on our work by reviewing the clerk’s on-line docket. Thus, if you have asked several leaves to get things done, your curious client will know precisely why. This transparency isn’t all bad. At a minimum, we might not spend all of our time asking for more time.

The age of the electronic practice of law should be a welcome change and it makes our offices more efficient, responsive and environmentally friendly. But not everyone is enthusiastic. “What’s the use in signing electronic plea forms from computers awkwardly placed in the middle of the courtroom in criminal cases,” one practitioner asked. “We will have to print paper copies of the plea forms anyways for our files.” Her dismay is understandable: the benefits of the Clerk’s paperless docket in criminal cases are lost if she has to print the document herself when she closes her file. But the larger question was why her office required a paper copy for the file when the Clerk – the official custodian of precious court records – does not?

Growing pains are to be expected when changes take place. To be sure, we are talking about doing away with paper – the very stuff we have been dealing with day after day since grade school. The stuff that carries the court’s powerful writs, summons and subpoenas. Have no fear. Those can still be on paper if you wish. But once they have served their purpose, keeping them on paper makes little sense, either to the courts or to us.

There are also economic benefits. At the very least, filing from our office computer saves a trip to the courthouse. And the filing deadline gets extended to 11:59 p.m., instead of 4:30 or 5:00. This in itself is a relief when the statute is running out.

A cloud-based office with scanned files is a dynamic office that can access information anywhere and under most any circumstance. Thus, while a paper document might elude you when you need it most during your negotiation with opposing counsel, the scanned copy in the cloud is easily accessible from a tablet device or even your smart phone because it is clearly labeled in your electronic client folder – and always will be. That same scanned copy is just as accessible when you are idly stuck at the airport and left with nothing to do. The exchange of discovery and other file transfers is similarly easier when the documents are scanned.

The virtues of accessing scanned documents anywhere are seemingly infinite. The cloud-based office converts seminar or deposition downtime into productive uptime. It frees us for more time with our families or other commitments. It improves our efficiency because documents are never lost, misplaced or burned. Storing files long-term or offsite is no longer an issue. They can be kept in multiple locations or be archived in DVDs or other media.

The bottom line is that though our business has forever used paper, it actually deals in information. Technology and the pioneering efforts of Ohio Courts have now made it possible to dispense this information quickly, seamlessly and efficiently. We should welcome the change. Our knowledge and expertise is what make us lawyers, not the paper. We are just as good – indeed far better – without it.

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Paralegals: An Ethical Conundrum

By Jameson Rehm

Being a paralegal is great. We can do whatever we want and if anything is wrong, well, we just blame it on the lawyer. Missed a filing deadline? I didn’t go to law school; how was I supposed to know. Does it matter to me, the attorney gets the next angry phone call. Documents aren’t ready for the court case? The attorney has to face the judge, not me. We don’t have CLE’s, bar exams, and certified grievance committees to worry about. Yes friends, paralegal is the way to go. (Please, for the sake of my career, please detect the tongue in cheekness of the preceding paragraph.).

As the profession continues to grow, both in the number of participants and the scope of responsibilities, paralegals are being pushed to the forefront as the bright and smiling faces of the law firm. Many times, we are the first person a client meets, a client’s main contact throughout the case, and the person the attorney relies on for documents and case updates. With this level of responsibility, how important is ethics to the paralegal profession?

When explaining to friends and family what a paralegal does, I like to explain us as the “physician’s assistants of the legal world.” PA’s require extra schooling in order to do their jobs; they assist the doctor by meeting with patients, often without doctoral supervision and are able to do most of the doctor’s job with few exceptions. There is, however, one major difference between the physician’s assistant and a paralegal. Physician’s assistants are personally liable for their certificate to practice. If an ethical complaint is filed against physician’s assistants and they are found guilty, they can lose their certificate to practice.

Currently, unlike attorneys, paralegals do not have to report to any ethical regulatory body if a complaint is raised. While some associations (National Association of Legal Assistants and Illinois Paralegal Association) have a Code of Ethics, there is no governing body at either the state or national level that enforces them. While attorneys can be pulled into the Supreme Court to answer for an incorrect filing or rudely handling a client, the paralegal may merely be disciplined or fired but otherwise remain free to pursue a life of continued paralegal fulfillment. Unlike attorneys, I did not have to endure an interview with other paralegals to determine if I have the character to handle the responsibilities I have been entrusted.

Now it’s time to step off the ledge. Based on our responsibilities and the current lack of oversight, paralegals should be held to the same standards as attorneys. We should be personally held to an ethical code that directly correlates to our ability to work in the legal field. All paralegals took either one or two years of extra schooling to earn a certificate. And just like our medical brothers, we should be responsible for having the privilege of holding on to our credential.

Finally, a paralegal should go through a character and fitness interview before we are given a certificate. The practice of the law and all those people who work in it are held to a higher standard in the public’s eyes than many other professions. Many people find it hard to trust strangers to handle matters for them that they cannot handle for themselves. The general public would be more trusting of the legal field if they knew that not only did their attorney go to law school, but the person they talk to on a regular basis and receive updates from has been put through a similarly rigorous process.

Being a paralegal is a privilege. It is one of the fastest growing careers in America and is still being defined on a day to day and job to job basis. As this career continues to expand, a structure needs to be put in place that not only gives the career the esteem it deserves, but sets a bar that must be met before they can call themselves paralegal. Just as the PA working in the medical field, a paralegal must be held to a higher standard due to the work that we do, the field we have chosen, and the responsibilities we undertake.

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Jameson Rehm, Columbus Bar
I will never forget the first time I turned down a winnable case. A young woman and her parents were sitting in my office telling me about a dispute with the woman’s employer. She believed she was being treated unfairly and wanted to file a lawsuit to force the employer to give her certain benefits to which she believed she was entitled. The problem was that the current issue was only the most recent of many. It simply was not a good fit with the employee and employer. In fact, the continued employment was making the woman ill from the stress and she was forced to seek medical treatment (in addition to consulting with a lawyer). I told her not to sue, to seek a modest severance and find another job. Could I have filed the lawsuit? Yes. Could we have won after years of stressful litigation? Yes. Would that have been in the best interests of the client? Absolutely not.

All attorneys have encountered the client with more money than sense, the client who simply cannot let go and move on, or the client who wants to pay you to “prove a point” or make the opposing party’s life miserable for a few years. There are many lawyers who will do just that. I recently had some very unpleasant litigation terminate with the filing of voluntary dismissals by either side. It was the best thing that could have happened. The proceedings were intractable and the parties hated each other. A year later, the opponent refiled the lawsuit. When I asked the lawyer why it was refiled, the lawyer responded, “Because my client wanted me to.”

Unfortunately, there seems to be a lot of that going around. My partner Larry James told me a long time ago, “Don’t let a client make you do anything stupid.” It seems that more and more lawyers simply do not want to have that difficult discussion with the client, either to avoid litigation in the first place or bring it to an end when the situation becomes untenable. I spent a full day with an official for a state entity at a mediation conference. This official had been dealing with lawsuits and attorneys for three decades. He regaled me with story after story of lawyers on prior cases “doing battle” and “enjoying the battle” and then told me that he thought he should be a lawyer because he “likes to argue.” I guess that is what the public thinks of the skills necessary to be a good lawyer. Nothing could be further from the truth.

The reality is that it is not difficult to find a lawyer who can competently litigate a case. Sure, some are better than others, but plain, old competent litigators are a dime a dozen. It is the more esoteric pursuit of whether to engage in litigation in the first place that is more of a challenge. As a profession, I think we are failing miserably at competently advising clients how to manage conflict and resolve issues. Clients should be paying us for our judgment on how to solve problems as opposed to simply filing lawsuits. At some point there was a reason that attorneys were referred to as “attorneys and counselors at law” and not just “lawyers.” Here are some thoughts on getting back to basics:

**What is the client trying to accomplish?** Many times a client sees you for the first time with a pre-conceived notion about what needs to be done in any particular case, or simply comes in and asks whether it is legal to do a particular thing. Between advice from internet chat rooms and stories from friends and neighbors, many clients think they know better than you what should be done to resolve a conflict. I once had a client bring in a complaint that he had prepared and just wanted me to sign my name to it for him to file. Turns out he had a claim against a totally different party, which we settled without filing suit and accomplished exactly what he wanted. You, as the counselor, need to start at the end
resolution of the problem and work backwards to get there the fastest and cheapest way possible for the client.

You have to be able to see around corners. Most clients don’t even know what they don’t know. While clients may tell you what they think is important, it may or may not actually be important to the analysis at hand. This requires the lawyer to spend some time with the client, start at the beginning, learn about the overall business or circumstances and get a grasp on history. If the case involves an industry or profession that is highly regulated, the lawyer better learn all the relevant regulations before providing advice. I once had a client who wanted to enter into a contract with a product manufacturer for sponsorship of an event. The client simply brought me the contract and asked me to review it. I did. It was fine. However, then I asked if there were any other contracts already in place for sponsorship of the event. I found out that the product manufacturer’s biggest competitor had already signed up to sponsor the event and the current contract was a violation of the prior. While clients may appear to be sophisticated and experienced, a good counselor simply cannot take that for granted.

Clients are people too. A good counselor has to assess the client’s physical and mental ability to engage in litigation or any other form of conflict resolution. Many lawyers end the analysis at whether the client has the ability to pay. Ask about a client’s health, his or her family, and his or her support system. Litigation can be taxing and unpleasant. Clients do not always have an appreciation of what it takes (in addition to money) to be involved in litigation that may span many years. On more than one occasion, I have simply told a client that I will not put him or her through litigation and worked out the best settlement possible short of filing suit.

I, of course, understand that clients do not always listen and understand that not every lawyer is in a position to tell clients they should not litigate. After all, if everyone was reasonable, there would be no need for lawyers. However, many posturing or overly-threatening tactics I see are simply not productive and embolden clients to overestimate the value of their case or its potential for success. Mindlessly doing exactly what the client asks is not helpful either. We, as counselors, should never be part of the problem and should always strive for conflict resolution, not conflict maintenance. That may require us to have tough conversations with our clients, conversations we may not even be comfortable having. But, hey, that is why we get paid the big bucks.

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Fall 2013 Columbus Bar Lawyers Quarterly 21
A leopard slept with a full belly in the tall grass near a tree from which the mostly bare skeleton of an impala dangled about 15 feet above the ground. A hyena inched closer from the brush about 50 yards away, apparently hoping some meat had fallen from the branch where the big cat had hoisted its prey after a kill in early morning or the night before.

Keeping a close eye on the spotted, slumbering giant, the hyena crept to the site of the tree fall and grabbed a fresh piece of loin. The leopard quickly stirred, sprang to its feet and galloped toward the smaller, less pretty member of the cat family who, in turn, bounded back toward the bushes with part of its stolen dinner still hanging from its mouth.

The hyena stopped short and looked back, like he knew the predator was too gorged to want to chase him too far. And the leopard sat down below the tree so as to prevent any further thefts.

For those of us in the customized, topless Range Rover with theatrical seating, the scene was another delightful photo opportunity. “The animals don’t like people, but they won’t mind the vehicle. Stay seated and quiet. They will think you are just part of the equipment,” our ranger, Helen, had advised.

The episode was one of numerous close up and personal encounters with beautiful, wild animals in the northeastern area of South Africa called Londolozi, a nature reserve with plush accommodations for human beings. That was the second place on the itinerary of our recent vacation in that country.

The first was at a reserve called Bushman Safaris near the southeastern border of Botswana. That resort normally caters to archers wanting trophies to send to taxidermists. After four days of watching animals from the hunters’ “blinds” at watering holes, we traveled by mini-bus some 400 miles to the next attraction, a 32,000-acre reserve that sits behind the same tall electrified fence that surrounds the 8 million-acre Kruger National Park and a multitude of other private wilderness areas. The “big five” (lion, elephant, rhino, buffalo, and leopard) and legions of other species roam the whole of it.

Great Entertainment — Big Animals in the Wilds

(Second of a Three-Part Series)

By The Honorable David E. Cain

The concept of Londolozi – a Zulu word meaning “protector of all living things” – is totally different from the bow hunters’ playground called Bushman.

And the trip from the one location to the other presented a constantly changing landscape that first featured open rolling fields spotted with mounds of huge granite chunks jutting up from the earth and an occasional pine forest. Then came beautiful green mountains hovering over huge canyons.

As the countryside became cleaner and more moist, the villages and towns seemed to become more affluent. And we passed miles and miles of orange groves and banana farms. Still, we’d sometimes see a sign warning: “High Crime Area. Do Not Stop Vehicle.”

Night was falling as we passed through secured gates into the protected area at a reserve called Sabi Sands near the city of Hazyview. It took more than an hour on a narrow grayish soiled vehicle pathway (Bushman’s was reddish) to reach Camp Varty, one of five clusters that make up the housing in the reserve. More like a five-star hotel than a camp, the thatched roof, stone and stucco guest bungalows are connected with the hotel amenities by brick sidewalks, and all the rooms as well as the primary dining area are fronted by timber decks overlooking the Sand River and lush riverine habitat. All of it is covered by a large variety of trees and flowering bushes frequented by monkeys and baboons (the reason the sliding doors on our room had to always be hooked).

We were greeted by camp staff at the Varty entrance and taken to the bama – a circular, sand floored eating area surrounded by a bamboo fence and lighted by candles, lanterns and a campfire. Tables were covered by white cloth and each chair had a blanket for comfort against the cool night air (springtime in the USA is autumn in South Africa). After a master chef prepared our meals, the staff instructed us to never walk to our rooms after dark without a porter. They said the porters would look out for animals, but we later learned their concern was more for the deadly black mamba snakes that cover the continent. We learned that the hard way when my wife, Mary Ann, almost stepped on a 6 to 8 footer one mid-afternoon. It slithered a few feet away
and quickly coiled. We had been advised to stay perfectly still. We ran.

The staff also told us that a porter would knock on our door at 5:15 a.m. to make sure we were up in time for the first game drive (after coffee and biscotti) at 5:45 a.m.

Helen Young was our ranger. She grew up in Pretoria and has a master’s degree in zoology and environmental science. Our tracker was Enock Mkast, from Hazyview, who formerly served as an anti-poacher in Kruger National Park. When he had that job, his basic equipment was the equivalent of a pellet gun, while many poachers had AK47s. Now, in Kruger, the anti-poachers shoot to kill. And they are killing them (the poachers) everyday, he commented one evening.

After watching the sun rise through heavy mist oozing from the gently sloping hills, we came upon a male lion about 8-years old, who was on patrol, and followed him for nearly an hour before he disappeared into the bush.

The lion seemed domesticated – paying no mind to our vehicle a few feet away – but the ranger knew better. More than 14,000 people have been eaten by lions since 1960, mostly on foot for a long trip west through the protected area trying to illegally immigrate to a country with better employment opportunities, she later commented.

Soon we mingled with a family of elephants and watched a herd of female impalas being kept together by a single male who believed they all belonged to him.

Since the animals are most active at sunrise and sunset, our second daily safari began in late afternoon. In the first “sunset” drive we saw cape buffalo (the most “unpredictable” of the big five) a dozen or more mostly submerged hippos and a gator keeping its distance. Hippos can be tedious to observe, Helen explained. They spend most of the daytime hours underwater since their skin is sensitive to bright sun and they can hold their breath for 15 minutes at a time.

The next adrenalin rush came when Enock found the trail of a cheetah. Even Helen was excited, saying she hadn’t seen one for months and there are only an estimated 110 cheetahs in the entire protected area.

Unlike the elephants and rhinos, the big cats eat quickly, dining on protein rich meat, and then sleeping about 20 hours a day. Sure enough, Enock found the cheetah napping in some tall weeds. When she finally began lifting her head and rolling about, some 15 wildebeests banded together about 200 yards away and stayed totally focused on her every move, inching closer and closer to encourage her to leave the area. And she eventually did. An impala could be seen taking cover behind the larger animals.

Our next project was to see what was attracting vultures a short distance away. They led us to a fresh pile of bones. Helen said American vultures go by smell. But Africans go by sight and can clearly see something as small as newsprint from two miles away. In our travels, we also saw eagles and quite a variety of interesting smaller birds.

The highlight of the last morning drive was finding a lion pride with seven cubs and three lionesses. The mothers are mothers to all, even when it comes to nursing, Helen said. It takes about 2 ½ years to teach the cubs to hunt and live on their own, she added.

That evening, we sat among some 400 to 500 cape buffalo – from babies to very old – trudging around our vehicle and sloshing through a watering hole. After that came the drama of the leopard and hyena and then a surprise wine and cheese reception set up in the bush at nightfall by members of the Londolozi staff.

The next morning we boarded another mini-bus for a trip to the city of Nelspruit where we boarded a plane for a flight of about 1000 miles to Cape Town (the next and last subject in this series).
Woody Allen opened his 1970’s classic Annie Hall by speaking to the camera and riffing on the meaning of life.

There’s an old joke - um... two elderly women are at a Catskill mountain resort, and one of ’em says, “Boy, the food at this place is really terrible.” The other one says, “Yeah, I know; and such small portions.”

For recent law grads, un(der)employed and drowning in a lifetime’s worth of debt, the joke’s not so funny. There are few jobs and fewer still good ones.

Like the recent graduating classes that preceded it, nationally the Law Class of 2012 endured another miserable hiring year, barely better than the historically low employment fate suffered by the Class of 2011. The good news is that the employment outcomes suffered by the 2011 Class appear to represent the bottom of the legal hiring trough. According to the National Association of Law Placement (NALP), in absolute numbers there were more jobs for the 2012 Class than for the 2011 Class. The bad news, and it is mostly bad, is that owing to its historically large size, the employment rate in full time, permanent, JD required (FTPJD) jobs for the 2012 Class barely increased over the miserable FTPJD job rate suffered by the Class of 2011.

The brass ring seems ever more elusive, even for those law graduates fortunate enough to find FTPJD work. Not only is work hard to find for new law graduates, but the work they find is often unsatisfying. A survey of 65,000 employees conducted by Careerbliss, an online career information clearinghouse that has compiled massive amounts of career and industry data, showed that the unhappiest profession of all was that of associate attorney in a law firm. Of course job satisfaction contains two elements, the first one of which is having a job; preferably a full time, permanent, JD required one. And on that score the news for 2012’s law grads, in FTPJD, has not been good either, with little relief in sight. No one – not even the most sales hungry law school dean – is predicting a significant turnaround in legal hiring.

Closer to home, as we’ll see below, Ohio’s law schools produced 1,463 graduates in 2012. Almost 11% were totally unemployed, with no job of any kind at all as of the ABA reporting date, February 15, 2013, nine months after graduation. Barely more than half of Ohio’s 2012 law graduates were able to find the kind of FTPJD job they entered law school to find. Because it is now abundantly clear that Ohio, with nine law schools including five state funded law schools, has more law schools than it needs our state once again underperformed the national averages in the key categories of unemployment and employment in FTPJD jobs.

### LAW SCHOOLS: THE REAL EMPLOYMENT NUMBERS FOR THE LAW CLASS OF 2012

By Jason M. Dolin

<table>
<thead>
<tr>
<th>AKRO</th>
<th>Total 2012 Graduates (&quot;Grads&quot;)</th>
<th>139</th>
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<tbody>
<tr>
<td></td>
<td>% of 2012 Grads Employed in Full Time/Permanent/JD Required (&quot;FTPJD&quot;) Jobs - THE REAL EMPLOYMENT RATE NATIONAL AVERAGE = 56.2%*</td>
<td>46.8%</td>
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<tr>
<td></td>
<td></td>
<td>65/13</td>
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<tr>
<td></td>
<td>% of 2012 Grads Unemployed At Any Job 9 Mos. After Graduation (both seeking and not seeking employment) NATIONAL AVERAGE = 10.6%*</td>
<td>7.9%</td>
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<td></td>
<td></td>
<td>11/13</td>
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### PRIVATE LAW PRACTICE

<table>
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<tr>
<th>AKRO</th>
<th>% of 2012 Grads in FTPJD Private Law Practice</th>
<th>34.5%</th>
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<tbody>
<tr>
<td></td>
<td>Of Grads in FTPJD Private Law Practice, % in Solo Practice NATIONAL AVERAGE = 2.3%*</td>
<td>12.59%</td>
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<tr>
<td></td>
<td></td>
<td>6/48</td>
</tr>
<tr>
<td></td>
<td>Of Grads in FTPJD Private Law Practice, % in firms of Solo through 25 Attorneys (small practice)</td>
<td>77.1%</td>
</tr>
<tr>
<td></td>
<td></td>
<td>37/48</td>
</tr>
<tr>
<td></td>
<td>Of Grads in FTPJD Private Law Practice, % in &quot;mega&quot; firms of 501+</td>
<td>2.1%</td>
</tr>
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<td></td>
<td></td>
<td>1/48</td>
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</tbody>
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### LAW GRADUATE DEBT

<table>
<thead>
<tr>
<th>AKRO</th>
<th>% of 2012 Grads with at Least One Law School Loan**</th>
<th>89%</th>
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<tbody>
<tr>
<td></td>
<td>Average Amount Borrowed by 2012 Grads**</td>
<td>$66,283</td>
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<td></td>
<td>Average Amount Borrowed by 2011 Grads</td>
<td>$67,941</td>
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<tr>
<td></td>
<td>% Increase in Average Amount Borrowed of 2012 Grads vs. 2011 Grads</td>
<td>-2.50%</td>
</tr>
<tr>
<td></td>
<td>% Increase in Average Amount Borrowed Since 2010 Class</td>
<td>+9.3%</td>
</tr>
</tbody>
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* See ABA data at http://www.americanbar.org/content/dam/aba/adminis

**This was obtained on the U.S. News website at http://grad-schools.usne
Nationally, A Dim Hiring Future

Employment projections for the future hold little reason for optimism. No matter which source you consult, the projections are the same: anemic hiring with no change in sight. According to NALP, “For the fourth year in a row, law firms continued to exercise limited entry-level hiring. The legal sector saw a very small net gain in overall jobs in 2012, and overall lawyer headcount remains far off of pre-recession highs.” Further, according to NALP, “Rather than exhibiting the slow and steady recovery that might be hoped for, however, some firms seemed to put the brakes on in 2012, and both the median and average number of offers made to 2Ls (members of the Class of 2014) for summer associate positions in 2013.”

NALP’s analysis was borne out by a survey by The National Law Journal of hiring at the nation’s 350 largest law firms (the NLJ 350). According to The National Law Journal:

Law firms got bigger in 2012, but just barely. This year’s NLJ 350, The National Law Journal’s annual survey of the nation’s biggest law firms by number of lawyers, shows that firms grew by just 1.1 percent during 2012, a retrenchment from 1.7 percent growth in 2011. A full 140 firms on this list shrank in size - 40 percent of the group.

Particularly telling were the low numbers of associates hired...the results reflect the apparent once-and-forever demise of the business strategy of boosting revenues by deploying armies of associates. The 350 firms on this year’s list added a scant 622 associates – a particularly troubling figure given that U.S. law schools continue to pump out 43,000 graduates each year.

Moreover, it isn’t just low ranked schools that are having trouble placing their graduates. While in the hierarchy-obsessed world of legal hiring the top 25 schools in the US News rankings do better than many lower ranked schools, even schools in the top 25 aren’t doing very well. Nationally, 27.7% of graduates from top 25 schools were underemployed, meaning that they were either in short-term, part time, or non-professional jobs nine months after graduation. But once you get out of the top 15 ranked law schools, the percentage of underemployed for 8 of the 10 schools ranked 16 through 25 is around 20%; nothing to brag about. Only 31 schools nationally had an underemployment rate under 15% and just 66 - less than a third of all law schools had an underemployment rate below 20%.

Legal industry analysts joined the dim-hiring chorus. A report issued in 2013 by legal industry consultants Hildebrandt Consulting, LLC made clear what has now becoming obvious to those practicing law in the new post-recession normal.

“For the legal industry, the results in 2012, another turbulent year, were largely a repeat of trends that emerged...
over the prior three years. In fact, we think it is time to let go of any lingering notion that the industry will revert to the boom years before the Great Recession anytime soon. With profit growth and other financial indices reaching lower set points in the past four years, we anticipate that the current state of the industry will remain the norm for the foreseeable future.78

After years of sluggish hiring, it’s becoming clear that sluggish legal hiring isn’t sluggish at all. It’s the new normal. Hildebrandt, after reviewing legal industry performance from 2004 through 2012, concluded that the legal boom years of the 2000s before the Great Recession were an aberrant blip. The post-recession new normal is what we can likely expect going forward. Sluggish.

Back in the world, in a sign that can’t be good for new graduates either, employment insecurity wasn’t limited to recent grads, even for those who have arrived at the promised land of law firm partnership. A survey of 120 law firms by Wells Fargo Private Bank’s Legal Specialty Group published in January 2013 found that about 15 percent of the firms were planning on partner cuts in the first quarter of 2013.79 Although the layoffs and hiring freezes we saw in 2009 and 2010 have stopped, now several years after the official end of the Great Recession, the legal employment trend line remains noticeably stagnant. A February 2013 report entitled 2013: Report on the State of the Legal Market by the Georgetown Law Center for the Study of the Legal Profession had this to say:

“Following eight straight quarters of negative demand growth as reflected in declining billable hours, the U.S. legal market turned back into positive territory in Q4 2010 but has been unable to sustain steady and positive growth in demand for legal services...the present rate remains well below that in the pre-2008 period, when annual demand growth averaged 3.9 percent.”80

The report goes on to say that “when measured in terms of billable hours per month per lawyer, productivity has been essentially flat for the past three years.”81 Further, the proportion of new jobs in law firms of 250 or more lawyers fell 33 percent in two years, along with a 35% decline in median starting salaries at big firms since 2009.82

And in the face of this bleak industry outlook, and the overwhelming evidence of the high law school debt and miserable job prospects experienced by new graduates, we come to what is truly the most depressing statistic of all. A survey conducted by Lawyers.Com published in May 2013 found that “64% of parents hope their children will grow up to pursue legal careers.”83 That remarkable statistic proves a few things: (1) P.T. Barnum was right; (2) many parents won’t let facts get in the way of a good career myth; and (3) law schools can be assured of a continuing, albeit reduced, source of tuition fodder even as the legal employment market declines or remains static.

Ohio’s Unemployed 2012 Law Graduates

Data reported by Ohio’s law schools to the ABA in February 2013 (the ABA employment data reporting date for the Class of 2012) show that as Ohio slowly recovers from the recession, Ohio’s law graduates continue to suffer higher unemployment than the general population. By way of comparison, the unemployment rate for the general population in Ohio in February 2013 was 7.1%.84 The national unemployment rate for 2012 law graduates was 10.6%.85 The unemployment rate for Ohio’s 2012 law graduates was 10.9%, with 7 of Ohio’s nine law schools having unemployment rates that were higher than the national law school average. In addition seven of Ohio’s nine law schools had unemployment rates that exceeded 11.2% - more than 4 points higher than the unemployment rate for the general Ohio population. At the high end of Ohio’s 2012 Class, Dayton’s unemployment rate was 14.4%. At the low end, Ohio State’s unemployment rate was 4.1%.

Ohio’s Employed 2012 Law Graduates

The chart above reflects employment outcome data for the 2012 Class reported by Ohio’s law schools to the American Bar Association as of February 15, 2013, the mandated reporting date nine months after the Class of 2012 graduated.86 I have simplified the chart this year to concentrate on FTPJD work; the type of work sought by the overwhelming portion of law graduates. And of the FTPJD work obtained, by wide margins the largest employment category is private law practice (as opposed to business, government, or public interest, for example). Historically, private practice job placement has exceeded 50% of the jobs obtained, with the next largest employment category, business employment, approximately one third of the private practice employment.87

FTPJD Employment

The data show that 51.7% of Ohio’s Class of 2012 (756 of 1,463) had obtained FTPJD employment nine months after graduation. This was 4.5 points below the national average of 56.2% for FTPJD employment. Seven of Ohio’s nine law schools fell below the national average for FTPJD employment. The lowest FTPJD rate was 46.8% at Akron, with the highest of 59.5% at Ohio State.

Private Practice - The Largest Segment

In its desire to obtain FTPJD private practice employment, the Class of 2012 was no different than its predecessors. Of the 756 law graduates who obtained FTPJD employment, 67% (504 of the 756 who found FTPJD work) were employed in private law practice.

Solo Practice

Of the 504 employed in FTPJD private law practice, approximately 12% were employed in solo practice. The national direct-to-solo percentage rate is 2.3%.88 Eight of Ohio’s nine law schools exceeded the national direct-to-solo rate. Ohio’s direct-to-solo rate, at more than four times the national average, is bad news and masks weakness in the employment market. Indeed, while solo practice counts in the data as FTPJD employment, in reality it typically reflects that the student who went direct-to-solo practice was unable to find other work and chose solo practice as a last, or close to last, resort. Thus, while Ohio’s FTPJD rate is 51.7%, the extremely high direct-to-solo rate indicates that, in reality, the true FTPJD rate in Ohio is less than that. Of those in FTPJD private practice, Toledo was at the high end with a whopping 22.4% in solo practice. Cincinnati was at the low end with 2.0% in solo practice.

Small Practice

As in prior years, the overwhelming number of 2012 graduates in FTPJD private practice found employment in
small firm settings, which I define as firms of solo through 25 attorneys. Of the 503 graduates who went into FTPJD private practice, 68.1% (343/503) went to small firm practice. At 80.9%, Capital had the highest small practice rate. At 44.3%, Ohio state had the smallest small practice rate.

Mega Practice

At the other end of the practice scale is “mega practice,” which I define as firms of 501 or more attorneys. Overall, 5.2% of the 2012 graduates in FTPJD private practice, found work in mega practice. At the high end, 13.7% of Case Western's students in FTPJD private practice were in mega practice. At the low, none of Cincinnati's students in FTPJD private practice found work in mega practice.

Low Grow O-HI-O

Legal employment doesn’t look to be getting much better in Ohio anytime soon. Projections from Ohio’s Bureau of Labor Management Information (BLMI), the labor statistical arm of the Ohio Department of Job and Family Services, make clear that Ohio attorney hiring will follow the sluggish national hiring trend into the foreseeable future. Since 2004, the legal services sector (attorneys and others) in Ohio has lost 5,000 individuals, declining steadily from a high of 39,202 in 2004 to 34,404 in 2011 (latest data available). The most recent BLMI projections show that for the ten-year period from 2010 through 2020, on average there are projected to be 541 lawyer job openings per year, consisting of 382 replacement jobs (retirements and death) and 159 new job openings each year. Simply put, Ohio's projected growth is producing. This means that even if Ohio’s nine law schools cut their graduate output by 50% to 731 students per year – a scenario that will never happen voluntarily – they will still be producing over 150 more graduates each year than the number of projected attorney job openings in Ohio through 2020. Confirming the glut of attorneys in Ohio, an independent analysis appearing in June 2013 in The Atlantic found that as of 2011 Ohio had the 15th worst oversupply of lawyers of any state in the country. Remarkably, in the face of the existing and future projected glut of Ohio lawyers, when basic market economics would indicate that some Ohio law schools should be closing, at least two of Ohio’s public law schools continue to give serious consideration to constructing new (and presumably expanded) law school buildings. Clearly, no law dean will voluntarily close the institution that writes his/her paycheck and no state politician is willing to expend political capital to engage in the death match that would ensue in trying to close one or more state law schools. But to contemplate expansion? For all of its bravado talk about making “difficult cuts” and “bold moves” and “privatizing services” to reduce the budget, the State of Ohio continues to waste millions of public dollars each year by funding the largest number of state supported law schools of any state in the nation; thus proving that when it comes to the expenditure of the taxpayer’s money, politics trumps logic.

Debt, Debt, and More Debt

Overlying the dreary employment data is the ever present problem of law student debt. The aggregate law school debt for the loan-laden graduates of Ohio’s 2012 Law Class exceeded $125 million dollars. Eighty-seven and a half percent (87.5%) of Ohio’s 2012 Class graduated with at least one law school loan, carrying an average debt of slightly less than $100,000. The data show that at eight of Ohio’s nine law schools, graduates of the 2012 Class experienced increases in debt over the 2011 Class. For at least the second year in a row, Capital Law School was the graduate debt leader in Ohio. Its 197 Class of 2012 graduates carried both the highest average individual law school debt at $120,471 (per student with at least one loan) and the highest aggregate debt per law school graduating class at more than 22 million dollars. Akron’s 139 Class of 2012 graduates carried the lowest average individual law school debt at $66,283 (per student with at least one loan) and the lowest aggregate law school debt per graduating class at slightly in excess of $8.2 million dollars.

The graduates of five of Ohio’s nine law schools graduated with double digit percentage increases in debt over that incurred by the 2011 Class. At the end of 2012, Case Western’s 2012 Class graduated with average debt that was a full 20.1% higher than Case’s 2011 Class, with Cincinnati’s 2012 Class a close second experiencing a 19.9% increase in average debt over its 2011 Class. Since 2010, Cincinnati’s graduates experienced an increase in average debt at graduation of a whopping 43.9%. At the other end, Akron’s 2012 Class experienced a 2.5% decrease in debt over Akron’s 2011 Class.

This is Your Future

So for those readers (or the children of those readers) who may still be contemplating applying to law school this fall, let’s look at what your employment future will most probably look like when you graduate. More than 40% of you, and probably closer to half of you, nine months after graduation will be unable to find the kind of FTPJD job that you came to law school to find. Whatever your employment outcome, when you graduate three or more years from now you’ll have law school loans that, on average, will likely be well in excess of $100,000. If you’re fortunate enough to find FTPJD employment, the overwhelming odds are that it will not be in “mega practice” but rather in a small law firm with a small firm salary that will likely leave you struggling to pay your loans. For the almost 90% of you who will have loans, it’s a certainty that your loan payoff will take many years. Your employment prospects over those years, on the other hand, will be much less certain.

If you’re thinking about law school and you like that picture, then have at it. However, if you don’t like that picture – but you’re living in the employment fantasy land that the un(der)employed recent law graduates were living in when they applied to law school and thought they could beat the odds – it’s time to think again about going to law school. It will be expensive. Your odds of finding a high paying job out of school to service your debt will be slim. Even if you find a BigLaw job, your odds of making equity partner or finding fulfillment in that work are remote. Yes, I know you’re special, but all of the long term un(der)employed were special, too, when they applied to law school. They were all going to beat the odds. But now, sitting at home un(der)employed, depressed, and scared they don’t feel so special as the bills mount, the loans come due, and when the phone rings it’s not Ashton BigLaw III, managing partner, inviting them to join the firm but Louie the 1st, debt collector, inviting them to pay their bills.
Let's Go “Big Casino”

Now that casinos have come to Ohio many of us have seen firsthand that, in the big picture, the House always wins. And the House’s odds now, and into the foreseeable future, are that if you’re entering law school you’ll be un(der)employed and drowning in debt when you graduate. But, hey, it’s your (borrowed) money. Feel free to roll the dice. And as the House says to every soon-to-be loser who walks through its doors, “Good luck.”

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3. Id.
9. Id, at 4.
10. Id, at 9.
14. This year, and going forward, I will use the data reported by the law schools to the ABA, as opposed to the data reported to NALP. There are a number of reasons for this. First, because law schools are required to report to the ABA - the law school regulatory body - and can suffer sanctions if they fail to report or report dishonestly it is less likely that law schools will misreport to the ABA. Secondly, the ABA data is presented in a more clear cut and accessible manner than NALP’s. Finally, in my view and apparently that of the ABA, the methodology used by the ABA to calculate employment results more accurately reflects employment outcomes than the one used by NALP.
17. BLMI data on file with the author.
18. Certainly some of those graduates will obtain work out of Ohio but, presumably, that void will be filled with out of state graduates seeking work within Ohio thereby perpetuating the glut.
20. Faculty minutes on file with the author.
21. Calculated as follows: 197 total Capital 2012 graduates x 94% with debt = 185 with at least one loan. 185 x $120,471 average debt per Capital 2012 graduate with at least one loan = $22,287,135 aggregate debt.
22. Calculated as follows: 139 total Akron 2012 graduates x 89% with debt = 124 with at least one loan. 124 x $66,283 average debt per Akron 2012 graduate with at least one loan = $8,219,092 aggregate debt.
Verdict: $11,600,000.00. Complex Litigation. Plaintiff Inland Products, Inc. operates an animal rendering business at 599 Frank Road in Columbus. From December of 2004 through January of 2005 sanitary wastewater from the City of Columbus sanitary and storm sewer lines backed up into the lateral lines on Inland’s property and up through manhole covers both inside and outside Inland’s animal rendering plant. Inland’s witnesses testified that the wastewater flooded the ground floor of the facility in one instance to a depth of 18 inches and in another instance to a depth of 24 inches. Inland claimed that the flooding was a result of the City’s negligence in operating a series of isolation gates and sludge pumps at the City’s wastewater treatment plants at Jackson Pike and Whittier Street in response to a heavy inflow of groundwater and stormwater during this time period. The City argued it was not liable for the flooding of Inland’s property which it contended was the result of an act of God. The City also argued that it was entitled to political subdivision immunity. The trial court denied the City’s motion for summary judgment on the issue of immunity and the City appealed. The Court of Appeals affirmed in part and reversed in part, concluding that some of the allegations of negligence related to the City’s governmental functions and therefore the City was entitled to immunity on those claims. The case was remanded to the trial court for further proceedings on the remaining negligence claims. At trial, Plaintiff’s experts testified that Inland’s $11.6M damage figure represented lost revenue and loss in the value of the business which was sold a year later. The City argued that Plaintiff’s damages were $287,000. The jury found in favor of Plaintiff and answered interrogatories rejecting the City’s argument that Inland failed to mitigate its damages. The City filed a post-trial motion for a new trial arguing that the verdict was against the manifest weight of the evidence citing weaknesses in Plaintiff’s expert’s testimony. The motion was later withdrawn. Plaintiff’s Experts: Warren S. Burkholder, Jr. (appraiser) and Daniel Budney, PhD (engineer). Defendant’s Expert: Dax Blake, P.E. (engineer). The parties did not have meaningful settlement negotiations. Length of Trial: 10 days. Counsel for Plaintiff: Michael Canter, Gerald Ferguson and Martha Brewer Motley. Counsel for Defendant: Susan Ashbrook, Westley Phillips and Stephen Dunbar. Judge Patrick McGrath. Case Caption: Inland Products, Inc. v. City of Columbus, Ohio. Case No. 06 CV 15231 (2012).

Verdict: $34,166.79. ($1,666.79 Economic; $32,500.00 Non-Economic) Dog Bite. On December 28, 2007, Plaintiffs Sally Tait-Meyers, her husband Ron Meyers and their four-year-old son Evan Meyers were celebrating the holidays at the home of their relatives Defendants Thomas and Kathleen Alexander. As Evan was opening a gift, the Alexander’s Australian shepherd bit Evan on the face. Evan was taken to urgent care where he received stitches for four bite wounds. Plaintiffs alleged that Evan sustained permanent scarring which would ultimately require surgical revision. The sued for strict liability, loss of consortium and negligent infliction of emotional distress. The parties stipulated that the scars were permanent. However, Defendants argued that the scarring was minimal. Medical Specials: $1,666.79. Experts: None. Last Settlement Offer: $21,000.00. Last Settlement Demand: $125,000.00. Length of Trial: 2 days. Counsel for Plaintiffs: Adam P. Richards. Counsel for Defendants: Heather R. Zilka. Judge David Cain. Case Caption: Sally Tait Meyers, et al. v. Thomas Alexander, et al. Case No. 10 CV 12259 (2012).

Verdict: $8,513.13. Automobile Accident. On April 11, 2010, Defendant Rebecca Kemper struck a 1997 Ford truck that was parked on Perry Street near West Second Avenue. The truck was owned by Plaintiff Tracey Lemmon and used in his business Lemmon, LLC. In his Complaint, Mr. Lemmon claimed that the damage to the truck exceeded $20,000. He also claimed that he lost the use of the truck and estimated that, as a result he lost in excess of $100,000 in business. He also claimed that he incurred storage fees of $5,500. At trial, evidence was presented that Mr. Lemmon purchased the truck two years before the accident for $5,550 and put $2,000 in work into the truck to modify it for his business. Plaintiff sought $15,000 for loss of use at the time of trial. However, Defendant argued that Mr. Lemmon had only one job bid at the time of the accident and was able to get 100% of his pay. Last Settlement Demand: $18,000. Last Settlement Offer: $7,250. Length of Trial: 1 day. Plaintiff’s Counsel: John Gonzales. Defendant’s Counsel: Joseph Butauski. Magistrate Mark Petrucci. Case Caption: Tracey Lemmon, et al. v. Rebecca Kemper. Case No. 10CVH-15074 (2011).

Verdict: $5,623.00. ($2,623.00 in economic; $3,000 in non-economic) Automobile Accident. On February 21, 2004, Plaintiff Danny Boling was rear-ended on Parsons Avenue by Defendant Jeremiah Crow. Plaintiff alleged that the accident caused an aggravation of a C5-6 herniated disc and radiculopathy. At the time of the accident, Plaintiff was employed by The E-Z Go Golf Cart Company based in Thailand. Immediately after the accident, he received treatment in the ER but then returned to Thailand where he received additional treatment. In 2007 Plaintiff claimed
he suffered a flare-up of his symptoms while traveling for his deposition. He claimed ongoing symptoms related to the accident through the date of trial. He also alleged that he was unable to meet his sales goals in 2007 resulting in $30,000 in lost wages. Defendant admitted liability but argued that Plaintiff's ongoing treatment was unrelated to the subject accident. Medical Specials: $10,900. Lost Wages: $50,000. Plaintiff's Expert: Bradford Mullin, M.D. Defendant's Expert: Gerald Steiman, M.D. Last Settlement Demand: $50,000. Last Settlement Offer: $10,000. Length of Trial: 3 days. Counsel for Plaintiff: Jonathan Tyack. Counsel for Defendant: Stephen Findley. Magistrate Mark Petrucci. Case Caption: Danny Boling v. Jeremiah J. Crowe, et al. Case No. 10CVC 1312 (2011).

Verdict: $4,279,60. Automobile Accident. Plaintiff Richard Hale, a 47-year-old employee of the City of Columbus was a passenger in a city-owned maintenance vehicle headed westbound on West Nationwide Blvd. As the maintenance vehicle was crossing the intersection of Nationwide Blvd. and Neil Ave, it was struck by a vehicle driven by Defendant Suzanne Whisler that was headed southbound on Neil Ave. Ms. Whisler entered the intersection against a red light. She admitted liability. Plaintiff claimed soft tissue injuries to his back, a herniated disc and L4 radiculopathy for which he claimed he needed fusion surgery. Plaintiff also claimed that he was unable to return to work after his surgery because he was incapable of anything but sedentary work. Defendant argued that Plaintiff's herniation and radiculopathy were not related to the accident but were pre-existing conditions. Plaintiff's lost wage claim was also disputed because Plaintiff was laid off due to budget cuts while he was recuperating from surgery. At trial, Plaintiff's expert testified that Plaintiff's herniation and radiculopathy were caused by the accident. Upon cross-examination, Plaintiff's expert was confronted with pre-accident medical records that reflected symptoms of herniation and L4 radiculopathy for several years before the accident. The expert acknowledged that Plaintiff had not disclosed this medical history and conceded that his causation opinion was probably not valid. Medical Specials: $122,400.00. Lost Wages: Not Itemized. Plaintiff's Expert: Charles May, D.O. Defendant's Expert: None. Last Settlement Offer: $25,000.00. Last Settlement Demand: $300,000.00. Length of Trial: 2 days. Counsel for Plaintiff: Peter Rodocker. Counsel for Defendant: W. Charles Curley. Magistrate Mark Petrucci. Case Caption: Ronald Hale v. Suzanne Whisler. Case No. 11 CV 1182 (2012).

Defense Verdict. CPA Malpractice/Financial Fraud. Plaintiff Ken Hester alleged Tom Brankamp, CPA, made negligent misrepresentations regarding compiled financial statements Brankamp prepared, upon which Hester allegedly relied to invest $1.3M in Superior Kraft Homes, LLC. Hester also alleged Brankamp was part of a financial fraud regarding Superior Kraft. Defendant denied Hester's allegations, and asserted Hester did not justifiably rely on the compiled financial statements. Plaintiff dismissed his negligent misrepresentation claim immediately prior to trial and proceeded only on a fraud claim. Plaintiff requested the jury award compensatory damages of $1.3M, punitive damages of $1.3M, and attorneys' fees. The jury verdict was in favor of Defendant. The jurors answered the first two interrogatories unanimously in favor of Plaintiff, finding that Plaintiff had proven Defendant knowingly made a false representation that was material to the transaction. However, a 6-juror majority found in favor of Defendant on the third interrogatory concluding that Plaintiff did not prove that Defendant Brankamp made a representation with the intent of misleading Plaintiff into relying upon it. Plaintiff filed a motion for a new trial based in part upon the Court's response to a jury question seeking to clarify interrogatory #3 and the definition of the term “representation.” Plaintiff argued that the Court failed to correct the jury's confusion. The Court denied the motion. Plaintiff's Expert: Alan Duvall, CPA. Defendant's Expert: Heinz Ickert, CPA. Settlement negotiation information withheld by counsel. Length of trial: 8 days. Counsel for Plaintiff: Richard Talsa and Dan Gentry. Counsel for Defendant: Robert Nichols and Josh Rockwell. Judge Charles Schneider. Case Caption: Kenneth T. Hester v. Thomas W. Brankamp. Case No. 09 CVA–08–12145 (2012).

Defense Verdict. Employment Discrimination. In November of 2008, Plaintiff Natasha McKnight was terminated from her employment as an aide by Defendant OhioHealth Corporation. Ms. McKnight alleged that she was discriminated against because of her pregnancy. According to Ms. McKnight, after she advised her supervisor of the pregnancy, the supervisor singled Ms. McKnight out to make a case for terminating her under OhioHealth’s attendance policy. Ms. McKnight produced a witness who testified that she and other peers were instructed by the supervisor to watch Ms. McKnight for absences so she could have an excuse to fire her. The witness also claimed that the supervisor commented that Ms. McKnight would be better off terminated because she could go on welfare. Subsequently Ms. McKnight's obstetrician placed her on restrictions that prevented her from working. Ms. McKnight applied for a medical leave of absence which was approved. Ms. McKnight claimed that she was instructed not to work her last scheduled shift. However, when she failed to appear for that shift, she was fired. OhioHealth presented evidence that its attendance policy mandates termination of an employee who has had eight attendance occurrences. Ms. McKnight reached the eight occurrences during her pregnancy before the final occurrence. Her supervisor chose not to fire Ms. McKnight at that time and gave her a second chance but told her that she would be terminated if she had an additional occurrence. The final missed shift constituted an additional occurrence. Therefore, the supervisor appropriately terminated her employment pursuant to the attendance policy. Following the defense verdict, Plaintiff moved for a new trial alleging that a juror failed to disclose material information during voir dire and on the basis that the verdict was against the manifest weight of the evidence. The motion was denied. Lost Wages: Not available. The parties agreed prior to settlement negotiations that all settlement demands and offers were to remain confidential. Length of Trial: 3 days. Plaintiff's Counsel: John Sherrod. Defendant's Counsel: Allison Day and Natalie McLaughlin. Judge Mark Serrott. Case Caption: Natasha McKnight v. OhioHealth Corporation Case No. 10 CV 116 (2011).

Defense Verdict. Automobile Accident. On April 17, 2009 Plaintiff Suhail Khoury was traveling eastbound on Livingston Avenue on a motorcycle when Defendant Crystal Morin pulled out in front of him from Saranac Drive. Mr. Khoury was unable to stop his motorcycle and struck the side
of Ms. Morin’s Cadillac. Police officer Jeffrey Ackley witnessed the accident. He was off duty at the time, but claimed that Mr. Khoury was traveling 60-70 mph when Ms. Morin pulled out. Mr. Khoury denied that he was speeding. Ms. Morin was uninsured. Therefore, Plaintiff also asserted an uninsured motorist claim against his insurer, State Farm. Mr. Khoury sustained soft tissue injuries to his neck, back, right shoulder and right knee and suffered headaches. He completed his treatment by July of 2009. Medical Specials: $47,616. Lost Wages: None. Plaintiff’s Expert: Edwin Season, M.D. Defendant’s Expert: Ashley Dunn, Ph.D., P.E. Last Settlement Demand: $100,000.00 (UM policy limit) Last Settlement Offer: None. Length of Trial: 5 days. Counsel for Plaintiff: John K. Fitch. Counsel for Defendant Morin: James Connors. Counsel for Defendant State Farm: James Gallagher. Judge Guy Reece. Case Caption: Suhail Khoury v. Crystal Morin, et al. Case No. 10CV 3731 (2011).

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