COLUMBUS BAR

briefs

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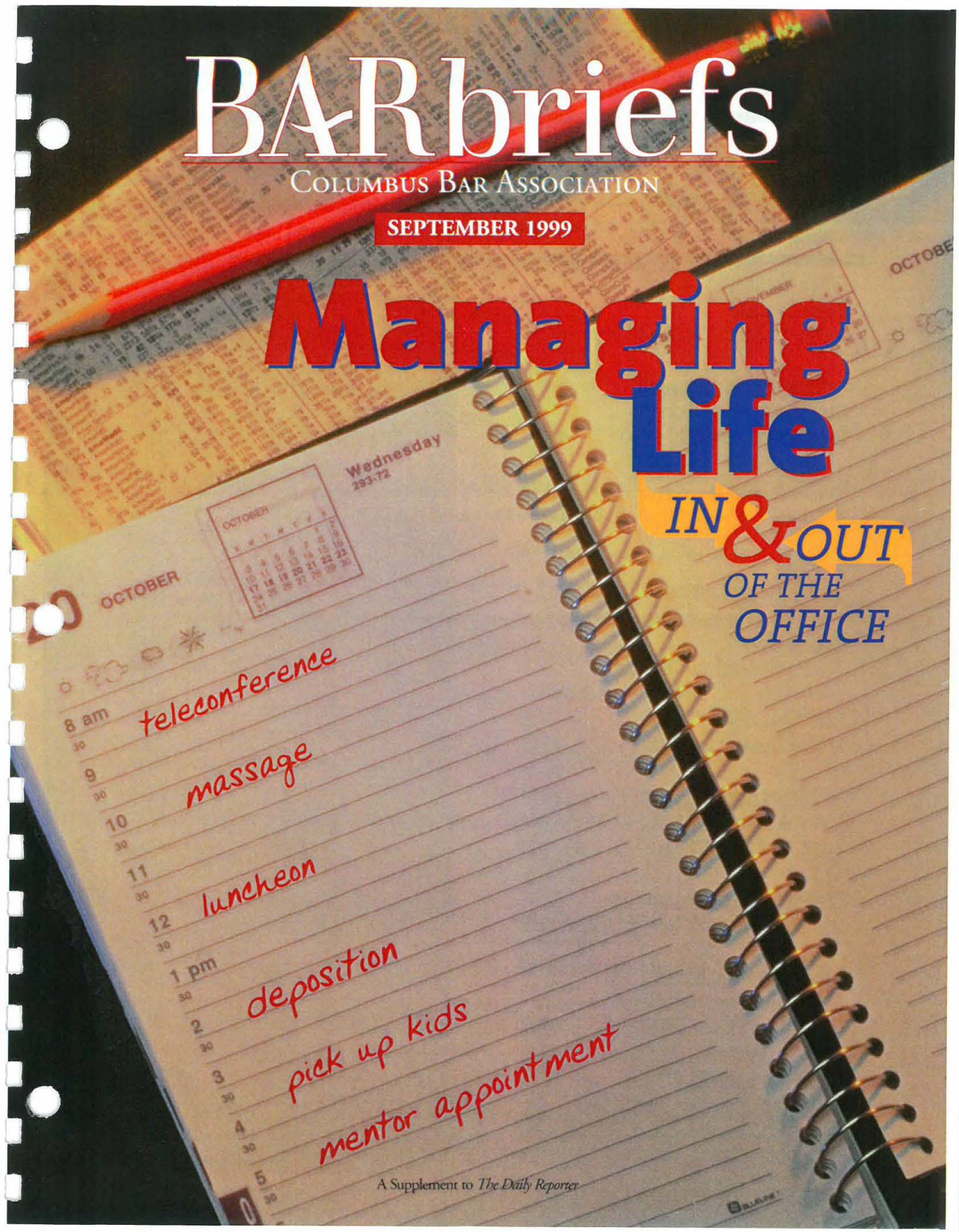
Managing Life

IN & OUT OF THE OFFICE



A Supplement to *The Daily Reporter*

Great Moments in Columbus Legal History

By Mark Kitrick

The year is 1979 and U.S. Marshals are on high alert. Living 24/7 with Judge Robert M. Duncan and his family, perhaps they are engaging in an abundance of caution. But the death threats are real. While the Columbus Board of Education is implementing court-ordered school desegregation in 1979 (a scant twenty years ago) two ring leaders of the American Nazi Party Local Chapter concoct the sinister plot of buying special powder to make bombs and place them in Old Orchard Elementary School, where the Judge's daughter attends third grade. The would-be bombers are later arrested, tried and convicted. The Federal Government is taking no chances with the life of the federal judge who has ruled that school desegregation and busing must take place in Columbus, Ohio, just as it had in many other cites across the nation. It is Columbus's time to undo and cure its long history of school segregation.

It is March 1977. Stereos are blasting the Talking Heads and The Clash. Star Wars and Rocky are box office smashes. A lean, tall, handsome man in a black robe meets the press at federal court in downtown Columbus. Ironically, perhaps, a cold wind chills the crowd as they enter court. It has been unusual for a judge to conduct so many press conferences for any one case, but Judge Duncan intuitively perceives that the community must be fully informed. Yet this day is particularly special.

Judge Duncan, a man of eminent judicial presence, after a long trial and writing his decision mostly in the bitter 15 degree temperature of Grand Rapids, Michigan, has just rendered the most important decision of his career. One of his goals was to write an opinion that any 6th grader can comprehend. He aimed to make sure that anyone who disagrees with his opinion will at least know what they disagree with. His opinion must serve the public as well as meet the legal standards of the day. To help promote these objectives, he requests that *The Columbus Dispatch* print in total his decision of *Penick v. Columbus Board of Education, 429 F. Supp. 229 (S.D. Ohio 1977).* As he converses politely with the press that blustery day, he is unaware that he succeeds on all accounts.

Before *Brown v. Board of Education*, there were many legal challenges to the Columbus Public Schools integral separation of the races in its school system. Even prior to 1871, African American citizens repeatedly demanded adequate schools for black children. Suits were filed and the Ohio Supreme Court eventually overturned certain segregation statutes. Yet, it was 1878 before the first black person even graduated from high school in Columbus. Despite a 1913 integration trend, school attendance areas continue to be gerrymandered and the brief trend is reversed. There is an abundance of concrete examples of "colored" versus "white" separateness. To illustrate, when *Brown I* was decided in 1954, there was not one single black high school principal in Columbus. It was clear that separateness was not caused by racial neutrality.

From Brown until that chronicled day at the federal courthouse in 1977, Columbus was averaging a growth rate of seventeen percent every decade. The black population from 1940 to 1970 tripled; in 1970, 18.5 percent of the population was African American. The increasing demands of growth impacted school development, location, size, and faculty placement. The end result, however, was still racial segregation in the schools. For example, during the 1975-76 school year, when the Penick case was tried, 70.4% of all the students in the Columbus Public Schools attended schools that were either 80-100% black or white; 73.3% of the black administrators were assigned to schools with 70-100% black student bodies; and 95.7% of the 92 schools that were 80-100% white had no black administrators assigned to them.

The Penick case was a high profile class action trial in the capital city of Ohio; it was intense and high drama: 36 days, 70 witnesses, 600 exhibits and a transcript over 6,600 pages. Plaintiffs' lead counsel, Louis R. Lucas, of Memphis, Tennessee, was a veteran trial lawyer with numerous school board cases notched on his litigation belt. A progressive thinker who formed the first multi-racial law firm in Memphis, he along with other plaintiffs' counsel attacked the case with a unique approach that had been winning in the North; they conducted a forensic autopsy of Columbus's school district. One of the "coroners" was Professor Gordon Foster, who statistically analyzed race discrimination in Columbus. Despite the defense that anti-discrimination laws tracing back to 1880s prevented *de jure* segregation, plaintiffs proved that the Columbus School Board intended to discriminate on the basis of race. Two crucial realities buttressed that finding: (1) the Columbus School Board, despite years of urging, failed to make substantial moves to correct racial imbalance caused by school construction and attendance zones, and (2) federal funding to correct these matters had been rejected.

Excellent lawyering took place on both sides.

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Great Moments

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Notwithstanding an unprecedented, well-funded defense mounted in part by the State Attorney General and highly respected local counsel, Sam Porter, Judge Duncan's decision was upheld, even after two rounds of review by the United States Supreme Court. The busing plan in 1979 was implemented against the backdrop of extraordinary social pressure, primarily from parents who did not want to send their children to certain schools. The plan was also a logistical nightmare. To its credit, however, the public school board did an exemplary job carrying out court-ordered mandates, an affirmation that people can do their jobs well, even if they do not necessarily want to do that certain job.

Judge Duncan, now a "jurist in residence" at The Ohio State University College of Law, comments humbly that it was not a difficult case to rule upon—he merely applied the facts to clear law. But he agrees that this case's societal impact was profound. This still active, amiable jurist says that the case was not difficult for him because of the outstanding lawyers with whom he worked. He hoped at that time people would respect the logic of his decision, and he believes today that the people of Columbus would have initiated such social change regardless of the case. Yet he acknowledges that the court system probably accelerated the much-needed change. Judge Duncan concludes that, when society encourages children of various cultures to come to know one another and to begin to understand and respect their differences, the outcome is positive social changes.

This case marks a grand moment in Columbus's legal history. Although there has been no final adjudication whether the court's majesty and power can truly change attitudes and improve how we feel about each other, the Penick decision affirms the power of our constitution and how we with all our societal weaknesses highly regard minority rights and ultimately will act, albeit sometimes by catalyst of court mandate, to improve the quality of life for all peoples.

It's Manageable

(Continued from Page 7)

mentor. These unpaid commitments will generate clients who are serious about their cases and who want to keep you paid.

This article has turned into one of those laundry list pieces about what you should do. If nothing else, remember that the keys to client management and business management are time management and people. From clients to mentors, we are all people trying to make a better work environment in the most efficient and courteous manner possible. This translates into better services for your clients, and ultimately will produce a result about which everyone is proud. An efficient and courteous office makes for big dividends and less stress.

Chapter Two: Equal Rights in the Columbus Police Department

By Mark Kitrick

Fifteen officers stand at attention in their dress uniforms. They raise their hands to be sworn in as Sergeants, their badges shimmer in the spotlight, their hearts pounding with pride and their color black. It was a hot summer, 1987 and this moving ceremony was the culmination of a ten-year lawsuit demanding racial equality within the Columbus Police Department. David Vines, the most senior officer of 23 years, along with Mary Lester, the first ever woman Sergeant and the remaining striped police who are in the limelight cumulatively have 242 years service, 227 commendations, 3 medals of merit, 1 Silver Cross and a Jefferson Award for community involvement. Many tried and few succeeded and it is finally their time, a fine moment mandated by contemporary law.

The struggle which led to this historic ceremony was legendary. Two sets of lawyers squared off in a decade long battle that began in 1978. Sandy Spater, Fred Gittes and Lea Ann Smith represented the 16 members of the Police Officers for Equal Rights versus the City of Columbus which was vigorously defended by Donald Keller, David Buchman and Eileen Groves. The price paid for this conflict was enormous, both emotionally and financially. The Plaintiffs' firm stood at the brink of bankruptcy after expending literally four full billable years and over $80,000 just in expert witness fees. The City spent an estimated half million defending the case. There was monumental pressure for police officers to keep silent. Threats and tension on the force was extremely high, probably an all-time high. Battle lines in the community were drawn as a result of this constantly smoldering, sometimes igniting, racial strife.

The Plaintiff's 1977 Title VII, class action suit alleged that the Columbus Police Department engaged in systematic racial discrimination against blacks when it came to promotions, assignments and transfers. It was not until 1979 that a federal order even required the City of Columbus to hire blacks in the police division. Over time parity did not exist. With approximately 15% blacks on the force, less than 3% who were promoted were in supervisory positions. James Jackson was the only high ranking black officer.

The years of pretrial litigation and the liability trial in 1984 garnered more local and national press than almost any other case in Columbus's recent legal history. Sensational stories chronicled the massive labor, including numerous depositions that unearthed frightful realities which were publicly exposed during the five-week trial in federal court. Judge Duncan was presiding, then 56 years old, tall, his patience thinning as he quietly listened to numerous episodes of spine chilling racism commonplace in the CPD. Racial slurs it seemed were not unusual occurrences, certain officers were found in clan robes, an officer was called to a scene where a cross is burned as a "joke," and whites and blacks who were friends or wanted to work together on the force were under extreme pressure and strictly segregated when it came to

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Equal Rights

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assignments. There were certain police divisions that blacks simply never got in. Experts hired by both sides testified as to police methods of "paper testing" and whether the tests were valid or discriminatory in nature. Lives and livelihoods were on the blue line. Not surprisingly, the racial chasm within the force deteriorated and few wanted to testify at trial. The division in the community also became increasingly sharp. Ultimately, however, prowess burst through the veils of fear and developed its own principles of law.

The pervasive record of discriminatory acts was so persuasive, except in the area of discipline, that questions about such acts of human behavior found answers in Judge Duncan's 50 page ruling that the evidence overwhelming proved that the CPD had systematically and overtly discriminated against blacks. The ruling was a legal thunderclap which reverberated here, as well as in New York, Chicago, Cleveland, and Cincinnati, among many other big cities. This historical practice needed a clean-up plan and remedies needed to be administered.

Yet before the remedy stage was accomplished by Judge Duncan, he retired and it was not until 1986 and thereafter that Judge James Graham, after a series of briefings and in reliance upon Judge Duncan's decision, issued a myriad of orders to remedy the past inequalities within the department. To name a few, Judge Graham ordered the City to pay $550,000 back pay (an average payment of $16,000 per officer), he awarded attorney fees of almost a million dollars to the Plaintiffs' attorneys, he commanded the hiring of an equal employment opportunity officer to safeguard against discrimination, promotions to supervisory positions that had been denied because of race were required, and transfers of officers into department bureaus, like SWAT, were mandated. His orders as well as Judge Duncan's decision led to that momentous ritual for the Sergeants. It took additional years and more motions and hearings for his orders to ultimately become a reality in the late 1980's, and we must not overlook the fact that technically the City of Columbus and its employees are still permanently enjoined from providing, permitting, or condoning a discriminatory work environment.

Our community's consciousness was awakened to another arena of overt racism, thus giving us an opportunity to uproot and vanquish this deeply entrenched segregation in this particular social system. Fortunately, through many acts of bravery and the power of the law, the CPD was improved immediately, finally gaining from the many talented officers now able to serve the great people of Columbus at the higher ranks. Again, as with court decisions that decree group behavior, on the whole the effects cannot be fully ascertained or appreciated. At a minimum, a new set of officers not being groomed by a segregated system can become leaders and effect positive change.

The litigation was a lengthy, turbulent birthing process. Birth is painful and this was no exception. While our healing is ongoing from this tormented period, we still have a great opportunity to nurture and charge our young egalitarian child with the axiom that the commission of racism is in direct contradiction to our legal code centering on equality for all.

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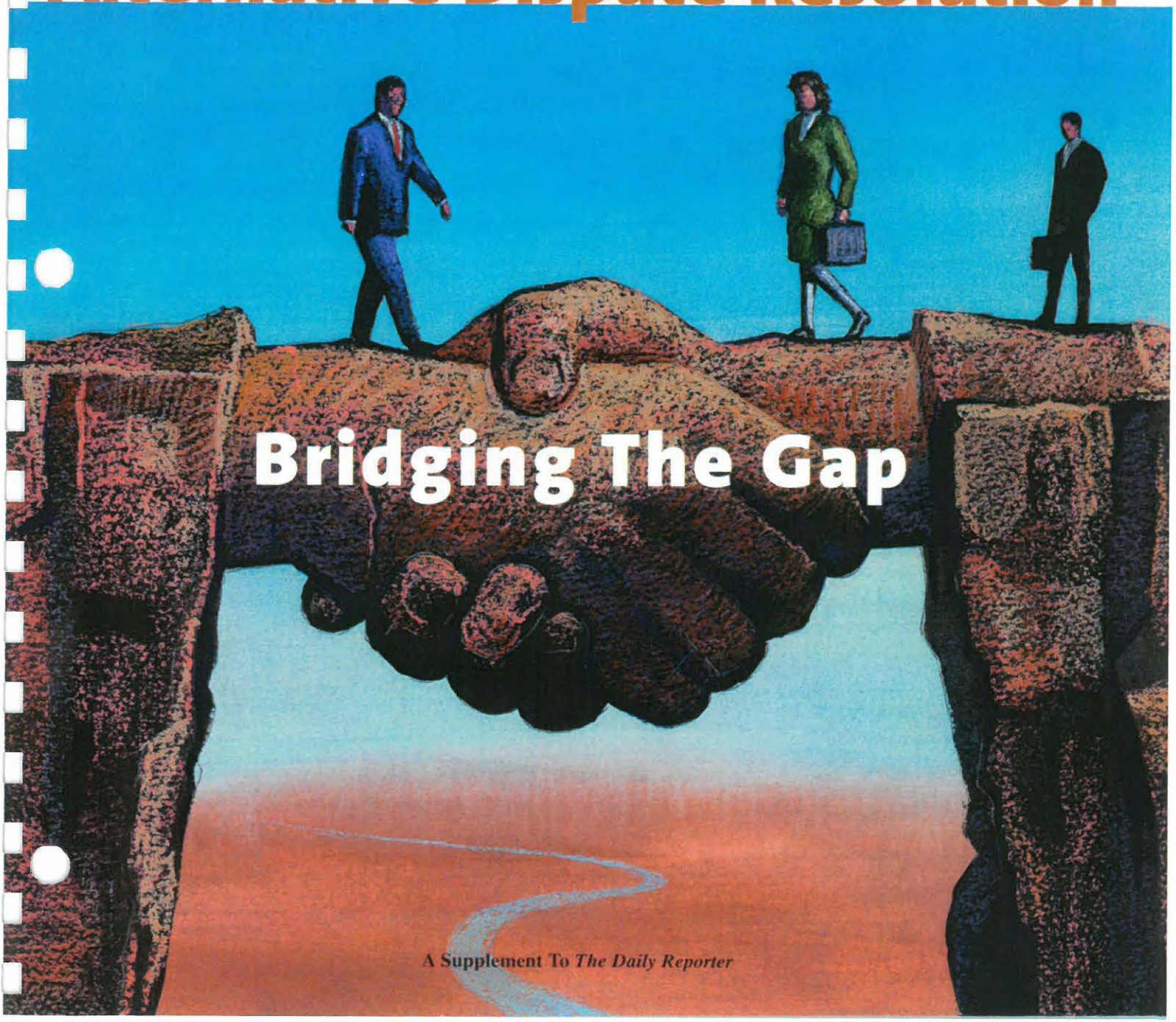
NOVEMBER 1999

Alternative Dispute Resolution



A Supplement To *The Daily Reporter*

Chapter Three – Pamphleteering and The First Amendment

By Mark Kitrick

Margaret McIntyre exhales her last gasp of air with a spine tingling "hah" as her body unwillingly shuts down to the dark and unholy command of cancer. This once formidable and feisty woman, with an imposing appearance, was now at rest. When her energy transferred that day, Margaret did not know that her voice in life and past her untimely death would not be silenced; rather she would continue to speak to all of us through the First Amendment.

It's a crisp, clear spring in April, 1988. As the dusk sky shares with us blinking constellations, Margaret, her son, and a friend distribute leaflets at Blendon Middle School in Westerville. There is a public meeting debating a referendum on a proposed school tax levy and Margaret opposes it vehemently, even though she has two of her own children in school. Her home grown, computer generated leaflets express the views of "Concerned Parents and Taxpayers" and say in part, " Vote No, Issue 19 School Tax Levy." But because her name is not on these particular leaflets, she is cautioned by a school official for the levy that her acts do not conform to Ohio election law. Margaret, outspoken and unyielding, perseveres in her battle, armed with the ammunition of anonymous leaflets while she attends other public meetings. Ultimately, despite the proposed levy being defeated the next two elections and contra her unrelenting expression of opposition, the levy passes in November, 1988.

Mark Kitrick

It is one year later, April,1989 and five months post election. The same complaining school official now files a complaint with the Ohio Elections Commission which charges Ms. McIntyre for distributing unsigned leaflets in violation of Ohio Code 3599.09(A). Margaret receives a $100 fine and is outraged. It is legal warfare, regardless of the supposed trivial amount in dispute.

Margaret's well-respected attorney, George Vaile, leads the struggle and the Franklin County Court of Common Pleas reverses her fine, concluding that she neither misled the public nor acted surreptitiously and found the Ohio statute unconstitutional as it related to her conduct. A divided Court of Appeals reinstates her fine which the Ohio Supreme Court then affirms, with Justice Wright writing a powerful dissent.

Consistent with her constitution, Margaret persists and her case is accepted by the United States Supreme Court which will decide whether Ohio statute's prohibition of anonymous campaign literature abridges the freedom of speech within the meaning of the First Amendment. Joining Margaret's legal squad is Professor David Goldberger, a professor at The Ohio State University College of Law and director of the Legal Clinic, member of the ACLU, and highly esteemed veteran of First Amendment issues. Unfortunately, after cert. is granted but before oral argument, Margaret dies. As with any resourceful legal wrangle, the Ohio Elections Commission's attorneys try to lasso Margaret's claims out of the courtroom, arguing that the issue is moot, but her husband maintains that the Estate is liable and thus is permitted to be substituted as Petitioner.

We are transported to Washington, D.C., on a beautiful fall day in 1994. The trees explode a farrago of colors, and we gasp in delight as we would at a Fourth of July fireworks display. It is more than six years after Margaret first started distributing her modest leaflets. We gingerly walk into the imposing, filled-to-capacity courtroom to observe an iron will contest between mentor and student: it is Professor Goldberger for the Petitioner debating his former student, Andrew Sutter, who represents the Respondent, the Ohio Elections Commission. It has been a classy and extremely civil relationship between the two, one that still exists today, and they are facing off on First Amendment grounds cleared for engagement.

The case is simple: can the State of Ohio require someone to put their name and address on a leaflet or pamphlet which deals with their opinion on a political issue, pursuant to this particular statute? The Ohio Supreme Court has found the statute to be reasonable and nondiscriminatory, utilizing the "ordinary litigation" balancing test, and held that this particular code's salient purpose is to prevent fraudulent and libelous statements and to provide the electorate with a mechanism for evaluating such material.

The United States Supreme Court concludes this reasoning to be a "blunderbuss" approach. First, the High Court finds that Ohio's statute regulates core political speech and thus deserves the highest protection, vis-à-vis the "exacting scrutiny" test. That is, is the Ohio statute narrowly tailored so as to serve an overriding state interest to justify its restrictions? The Court finds that a critical issue with the statute is that it imposes direct and broad regulation of the content of any such type speech without regard to whether it contains fraudulent or libelous statements. Moreover, there is already another statute that prohibits such statements. In the end, the Court holds that Ohio fails to show that its interest in preventing misuse of anonymous speech in an election of either people or issues justifies a prohibition of all uses of that speech.

From the High Court's viewpoint, eloquently expressed by Justice Stevens,

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Pro Bono Project Volunteer Attorneys

Community Legal Clinic Volunteers
Attorneys increase the delivery of legal services to the poor by working in partnership with community organizations. These agencies provide their client audience, assist in assessment of their needs, and provide a meeting place. Volunteer attorneys answer questions within their specialty area in a workshop format. During the initial six month period, nine attorneys helped 62 people with just twenty-one hours of service.
David Anderson
Amy Bostic
Maryellen Corna
John Hoffman
Jeffrey Liston
Joseph Maskovyak
Seth Reichenbach
Phil Sheridan
Roger Warner

Domestic Violence
These attorneys were key in developing a model to provide domestic law representation for low income clients by non-domestic law attorneys. After targeted training, civil protection orders were generated by these attorneys in partnership with the Southeastern Ohio Legal Services. These attorneys handled eight cases and donated 173 hours of their time.
Joseph Blasko
Cheryl Hankerson
Timothy J. Hoover
Mark Kneuve
David Lyons
Scott Ziance

Stress-Less

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powerful incentive to work toward a fair resolution," she concluded. Approximately 40 local attorneys belong to the Council—all have dispute resolution skills. Further information about the Collaborative Family Law Council of Central Ohio and a list of attorneys who practice collaborative law may be obtained by calling 614-470-2908 or by visiting their website at www.winwindivorce.org. In addition, a web search using the terms "collaborative law" will yield a list of about a dozen more websites run by collaborative law groups across the country—these sites contain a wealth of additional information on the topic.

Pamphleteering

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the linchpins to its conclusion that the Ohio statute is unconstitutional were that anonymous pamphleteering has been an honorable tradition of advocacy and dissent, a protective aegis from a majority's tyranny. In that sense, it is sacrosanct. Anonymity has many purposes. To protect one from retaliation, sanctions and suppression. To not allow the reader to be prejudiced by an author's name. To allow full expression. Many great authors of literature have embraced this custom of anonymity to advocate political causes. How could we forget Mark Twain (Samuel Langhorne Clemens), O. Henry (William Sydney Porter), Voltaire (Francois Marie Arouet), George Sand (Amandine Aurore Lucie Dupin), George Elliot (Mary Ann Evans) and Charles Dickens (Boz)?

Moreover, as mentioned by Justice Stevens, the most famous illustration of our sanctifiable heritage are the essays of the Federalist Papers which were signed not by the authors James Madison, Alexander Hamilton, and John Jay but by "Publius." Even the Anti-Federalists tended to publish under pseudonyms. The progenitor was a pre-Revolutionary War English pamphleteer "Junius" whose true identity is still an enigma. Ultimately, our secret ballot is perhaps the best paragon of what exemplifies our tradition of anonymity. On April 19, 1995, the Ohio Supreme Court was reversed. McIntyre v. Ohio Elections Commission, 514 U.S. 334 (1995).

To conclude, we believe in the marketplace of ideas; it distinguishes us from all nations. We believe that the "best of truth is the power of the thought to get itself accepted in the competition of the market," as Justice Holmes remarked in 1919. We believe that simply because political speech has distasteful consequences sometimes, there should be greater weight to the desirability of free speech than to its dangers of misuse. We believe that we do not punish fraud by indirectly and indiscriminately outlawing a category of speech, based on content, with no necessary relationship to the dangers we want to prevent. We believe these axioms to be centerpieces of our political system.

Through Ms. McIntyre's will, she reaffirmed these truths and legacies. Her altercation over a $100 fine hallmarks the apotheosis of what is integral and sui generis to our government since inception. Margaret took on the burden of proving to us that we cannot be muzzled in a societal marketplace dedicated to the unfettered exchange of ideas. Margaret showed us that the steadfast street corner pamphleteer cannot be trifled with any more now than 200 hundred years ago. Margaret was never silenced, for she speaks to us now, more freely than ever.

Cain

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The O'Grady's have purchased a condo near Naples, Florida where they plan to spend future winters.

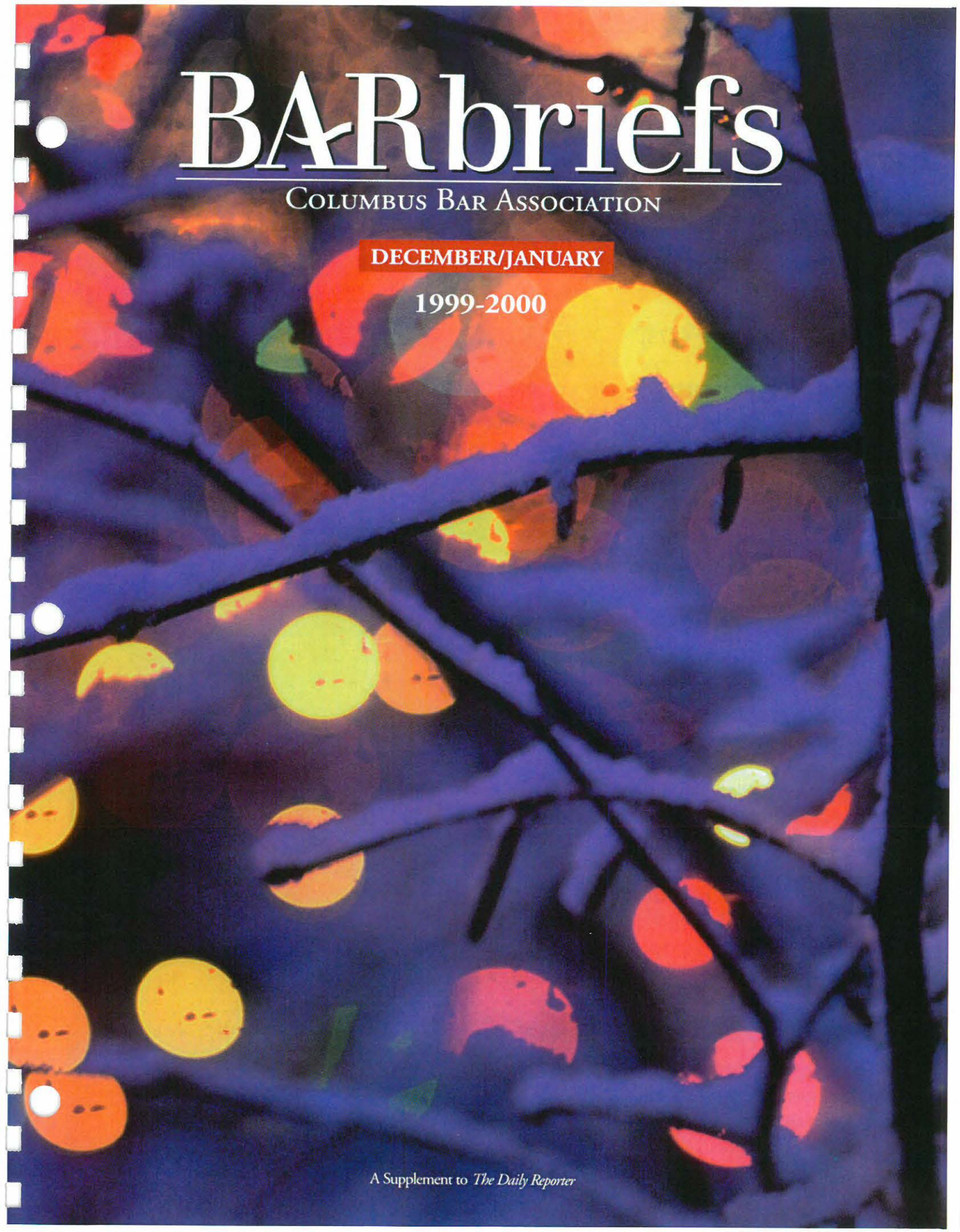
Then he'll have more time for one of his favorite activities—bird watching.

"Dick Ferrell got me hooked when we were on Municipal Court together."

But he'll still be looking forward to the civil trials next summer.

CORRECTION

George M. Albu was not listed on the Committee Chair roster printed in the September issue of *BARbriefs*. Mr. Albu is a second-year committee chair of the **Alternative Dispute Resolution Committee** of the Columbus Bar Association. We apologize for the oversight.



BARbriefs

COLUMBUS BAR ASSOCIATION

DECEMBER/JANUARY

1999-2000

A Supplement to *The Daily Reporter*

Chapter Four – Columbus's First Million Dollar Verdict

By Mark Kitrick

Don Richardson does his good Samaritan deed, ignoring the late October day chill that charges down his spine. A friend's car breaks down on I-70 by the Franklin County Stadium and the youthful, good natured, African American is standing in front of his friend's car, looking at the battery, when a runaway tractor trailer of 42,000 pounds lets loose on him. All Don remembers after that is waking in the hospital and being told that at 23 he is forever a quadriplegic, paralyzed from the middle of his chest down. He closes his eyes in pain and disbelief, trying to shut out the horrible news. He tells himself it must be a mistake but he knows deep down that his once familiar life has been stolen from him.

This was not the first time the 46-year-old lawyer who had been practicing 14 years or so—he was about 32 when he started practicing law after graduating from the University of Mississippi Law School— had heard such a tragic anecdote. Bill drew forward in his chair, pensively stroking his grizzled, well-trimmed beard and listened patiently to his new client in the wheelchair. He then confidently talked with Don much as he later did to the jury, straight forward, sympathetic, country-like. Bill was not someone easily reckoned with. That Mississippi drawl and easygoing style were mesmerizing and languorous. But Bill Lamkin's Mensa mind knew that Don's legal case would be challenging for at least three reasons. First, the combined savant of trial lawyers was that Columbus juries were stingy. Second, he was going to have to fight on liability and damages. The defense opined that someone tampered with the truck. Third, the amount of damages to which Don was legally entitled would be seriously contested. Lamkin was well aware that the highest verdict ever for an injury case had not even approached a half a million dollars. In fact, he had just settled the highest case in the county for $615,000 some two years earlier.

On behalf of his wheel-chair bound client early on Lamkin engages in extensive trial preparation using innovative trial techniques, like hiring a medical illustrator to demonstrate exactly where the fracture in Don's spine occurred, using a life care planner-economist to ascertain Don's nursing care costs for about 2 hours a day, creating "a day in the life" film in addition to 150 color photographs. All in all, the engaging practitioner spent at least $25,000 preparing for trial, unusually high expenses for the time.

So when Lamkin was offered and then rejected the $800,000 immediately before Don's trial, crazy was a descriptive word used for him. It was a warm summer trial, June, 1980, Judge Paul Martin presiding. Co-counsel for Plaintiff is Tom Kilbane, a well-known probate attorney. The trial lasts only three days and it is dramatic. Vocational experts debate for the jury's benefit. The first day a self confident Lamkin rejects a million dollar offer. The adjective crazy is reapplied to Don's attorney. Then the second day of trial the offer is raised to $1.2 million. Again, no deal. The thought process is simple, Bill informs his trusting client. "The down side is that we might lose a few hundred thousand and get $700-800,000; if we win, we might get three million. So let us go all the way." It was a brazen but deliberative maneuver.

Damages began with about $50,000 in medical expenses. Lost income calculations were in the combat zone of dispute because Don's main job had been to put chalk lines in parking lots so someone could paint them. This high school drop out would not make much money over his lifetime, so the economic losses were not high and at no time were his future losses exaggerated; rather, only the minimum wage for a laborer was used for Don's damage calculations.

Throughout his trial Donald sat patiently in the courtroom and, when he needed medical assistance, his family was there to help him. Don physically was as good as he was going to get, for after extensive physical therapy, he could at least roll his wheelchair with his large biceps. When he testified, he was a genuinely nice person and the jury liked him.

During his hour closing, in a soft, steadfast style, Lamkin outlined $982,000 for medicals and then for pain and suffering asked for $10 an hour for the remainder of Don's life. He laid it out honestly and plainly. He knew he had to convince this jury that "money awards are proper for something that money can't replace." The case closed in the afternoon of the third day and after the jury was out for two hours, they came back with a verdict of $1,982,000. It was the medicals plus one million for pain and suffering. The jury gave Donald what he asked for, in addition to funds Don could use to purchase a motorized wheelchair. It was a landmark verdict, the first million dollar verdict in Columbus.

During the next ten years of Don's life, at least he had the funds to make his house accessable and to take care of his wife, Pat, a nurse he had met at the hospital during rehab and with whom he adopted two beautiful children. At least he was able to enjoy his stereo with a new equalizer that he bought with the

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Friendly Skies

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• Allergy/Rheumatology and Infectious Disease, Cardiology, Critical Care, Gastroenterology, Nephrology/Urology and Hematology, Neurology, Ophthalmology, Pulmonary Function, and Pulmonary Medicine, Radiology, Computed Tomography, Invasive Radiology, Ultrasound, and Nuclear Medicine.
Costs of Procedures - http://www.mecqa.com/consumer/benchfee.cfm.

• Benchmark tables containing a comprehensive listing inpatient and outpatient procedures, with corresponding fees already reduced to a competitive rate.
MedicineNet - www.medicinenet.com.

• Contains a good listing of tests and procedures, with complete details on what to expect, how to prepare and aftercare.

Pharmaceutical/Drug Information
These sites contain information on drugs and drug manufacturers, including a link to the PDR.
RX List - www.rxlist.com.

• Contains over 4000 drug products, including descriptions, clinical pharmacology and studies, indications and usage, contradictions, precautions, interactions, adverse reactions, dosage and how supplied.
PharmInfoNet - http://pharminfo.com.

Diverse information from the U.S. Government and pharmaceutical manufacturers, including full text articles from clinical publications, economic data, symposium information from scientific meetings, and can benefit from links to other relevant drug information and pharmaceutical sites.
PharmWeb - www.pharmweb.net/

• Managed and operated by pharmacists and medical communications specialists, PharmWeb is a specialized provider of information for pharmaceutical and health-related organizations.
PDR.net - www.pdr.net/consumer.

• Free on-line access to journal articles, MEDLINE, patient information, news and other services is offered to all registered users of the site. Free on-line access to drug information from the Physicians Desk Reference and Stedman's Dictionary is granted only to U.S.-based MD's, DO's and PA's in full-time patient care practice. Other professionals or consumers wishing to access these particular features online may subscribe on-line for $9.95/month or $99.95/year.

Diseases and Conditions
Sites on the Internet range from technical versions for the medical professionals to easy to understand sites for the consumer.
Columbia University - Complete Home Medical Guide - http://cpmcnet.columbia.edu/texts/guide.

• Excellent source of information for the consumer on diseases, tests, conditions and wellness topics.
NOAH - www.noah.cuny.edu.

• This New York Online Access to Health site provides extensive information about subjects like aging, cancer, AIDS, and nutrition. NOAH is an exceptionally well-organized jump site, but there's also original content including lists of symptoms of various conditions linked to external sources.
NLM MEDLINE Plus - www.nlm.nih.gov/medlineplus/

• This site contains quality health care information from the world's largest medical library, the National Library of Medicine in Bethesda, Maryland. It provides access to extensive information about specific diseases and conditions and also has links to consumer health information from the National Institutes of Health, clearinghouses, dictionaries, lists of hospitals and physicians, health information in Spanish and other languages, and clinical trials.
OncoLink - www.oncolink.upenn.edu.

• Contains comprehensive information about specific types of cancer, updates on cancer treatments and news about research advances.
Medscape - www.medscape.com.

• Medscape offers specialists, primary care physicians, and other health professionals a robust and integrated multi-specialty medical information and education tool. Medscape is built around practice-oriented content. Each Specialty Site pools, filters, and delivers pertinent, continually updated content from tens of thousands of medical journal articles, expert-authored state-of-the-art surveys in disease management, Next-Day Summaries from major medical meetings, and more.
For more information on medical websites, see the Proceedings from Internet Librarian '99: The Internet Conference and Exhibition for Librarians and Information Managers, held November 8-10, 1999 in San Diego, California. It's probably a much safer way to get the information rather than flying into the city!

Chapter Four

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compensation. From time to time at least Don would exchange pleasantries with his skilled lawyer who called to see how he was doing, until Don's quadriplegia forced him to surrender to a kidney infection that killed him only a decade later at 32.

The trial was a legal watershed in Columbus. One historic consequence was that it legitimized the advent of innovative techniques. It gave us permission to take calculated risks as partisans for the people. It stood for the proposition that we can never over prepare and it gave us confidence that we should not judge our case by mere statistics, but by the likes of our client and the honesty and integrity that they can share with the jurors. It is a lesson that the struggle for justice can open new territory which once was considered unreasonable and bold. It taught us that our works for our clients can be compositions for the community which can be shared by all. It is a lesson that stepping outside a well-worn path can sometimes be a better way to represent our clients if we believe in our cause, in our clients and in our selves.

Eight Steps

(Continued from Page 5)

feel the desire to hold that piece of paper in your hand, but even better ... you will also have a backup copy on your computer.

Paul J. Unger is a practicing attorney and senior consultant for Matrix Consulting, Inc. in Dublin. He can be reached at (614) 792-7700 or paulu@matrix-re.com.

Volunteer

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If you would like more information about Lawyers For Justice or any other pro bono program, please contact Annette Hudson-Clay, Pro Bono Coordinator. She can be reached at the CBA by E-mail, annette@cbalaw.org or by calling (614) 221-4112.

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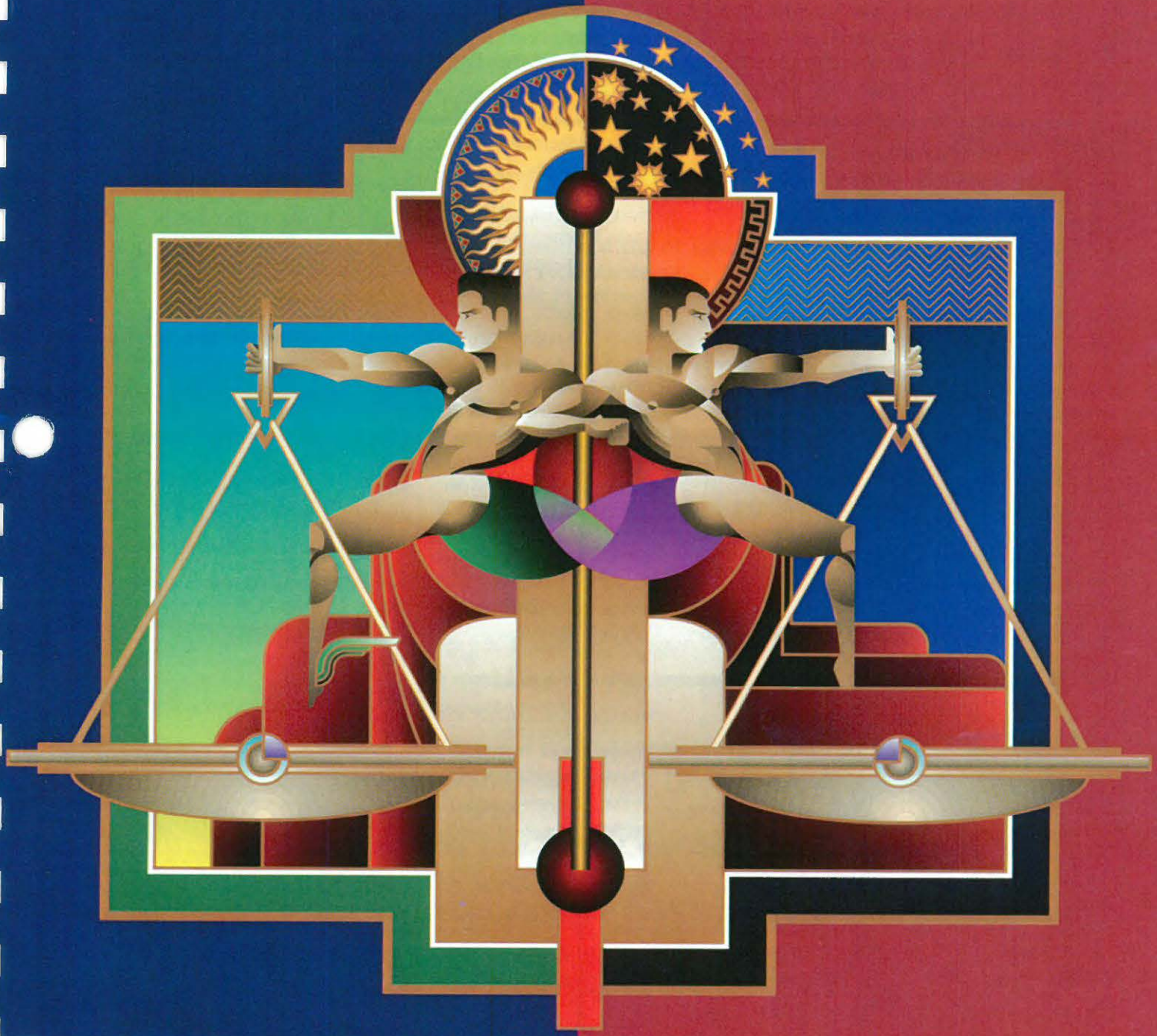
FEBRUARY 2000



Young Lawyers: The Balancing Act

A Supplement to *The Daily Reporter*

Chapter Five: Sketches of Influential Women of Franklin County, Part One

By Mark Kitrick

Honorable Viola Doudna Romans was one of the prominent women and able public speakers of Columbus, who served for two terms as a member of the House of Representatives from Franklin County. She was born in Guernsey County, Ohio, the daughter of Jesse and Rachael Lancaster (Benson) Doudna. Mrs. Romans is a direct descendant of Benjamin Benson, who served throughout the Revolutionary War.

Viola Doudna was educated in the village school at Spencer Station and she attended Friends' Boarding School at Barnesville. She was a graduate of Muskingum College and for several years a member of the faculty as professor of public speaking and oratory. In 1930, she received the honorary degree of Doctor of Literature from that college. She also taught at Wesleyan College for Women, Cincinnati, and for many years was actively engaged in lecture work, being identified for three years with the Lyceum Lecture Bureau of New York, and numerous Chautauqua Bureaus. She was a national lecturer for the W. C. T. U. and served as vice president of the Ohio organization. She took an active part in suffrage work.

Viola Doudna married Dr. Clarence D. Romans, the son of Dr. Thomas J. and Melissa Beall (Rosmond) Romans, natives of Ohio and lived at 1832 Summit Street.

In 1924 Viola D. Romans was nominated and elected as a Republican to a seat in the Ohio House of Representatives, being the first woman to be elected to the 86th General Assembly from Franklin County. At the regular session of that body in 1925, she introduced a bill to amend the General Code of Ohio and to add supplement sections to provide for licensing of agents of insurance companies transacting business in life insurance in the State of Ohio. She also introduced a bill to establish educational and vocational training for women in the State Reformatory at Mansfield, Ohio, and secured an appropriation for two new buildings, dormitory and assembly room, which were erected. Another bill, No. 360, was introduced by her to erect a sub-station of its municipal electric light plant in addition to the fire engine house already located there. All these bills were enacted into laws.
In 1926, Mrs. Romans was reelected to a second term by a larger majority, both in the primaries and general election, than in the first election. She secured an appropriation for the printing and publishing of all the rosters of soldiers and sailors of the Revolutionary War who were buried in Ohio — it was published. She was the author of a bill which provided that the governor and heads of departments should transfer documents and historical papers of value to safe keeping at the State Historical and Archaeological Building. As a result, much historical data has been preserved to date. She was chairman of the Temperance Committee during her first session and chairman of the Library Committee during her second session, and was a member of the Dairy, Food and Health, Public Buildings and C. & C. committees. Mrs. Romans was a member of the Columbus Woman's Club, Roosevelt Memorial Club, Women's Association of Commerce, and president of the Women's Republican Club of Ohio. She was reelected to that office for five consecutive years. She was vice president of the Ohio Woman's Christian Temperance Union and a member of Friends' Church.

Mrs. Romans' gift to the State of Ohio was a beautiful Scotch elm tree, which was planted in the state house yard, Columbus, in commemoration of the pioneer women of the Ohio legislature, and was accepted on behalf of the state by Governor Cooper, April 4, 1929.

Honorable Elma Powell Valentine was a prominent woman of Franklin County who served as a member of the House of Representatives, 88th General Assembly, being the second woman in Franklin County to hold this office. She was born at Brice, Franklin County, the daughter of Joseph Bigelow and Mary S. (Fancher) Powell.
Joseph Bigelow Powell was born on a farm in Franklin County in 1822 and died in 1913. He founded the town of Brice, the land being a section of his land holdings. Mr. Powell built a grain elevator and tile factory at Brice and worked with these businesses for many years.

Elma Powell, one of three daughters, received her education in the schools of Brice and Reynoldsburg, Ohio, and then attended a private school. She taught school for a period of six years at Reynoldsburg, and in 1908 married Dr. C. M. Valentine.

In 1928, Mrs. Valentine was elected as a member of the House of Representatives, 88th General Assembly. She authored the Valentine Bill, which provided that boards of education may employ school dentists. She was also the only woman to serve on the Legislative Inaugural Committee; was vice chair of the Library Committee; secretary of the Health Committee; secretary of the University and College Committee; a member of the Temperance Committee; and secretary of the Republican Caucus. From 1926-7 Mrs. Valentine was president of the Columbus and Franklin County Council of Parent Teacher Associations. She was instrumental in establishing permanent room for libraries in the schools, and providing permanent dental clinics.

Mark Kitrick

Mrs. Valentine was recognized as a speaker and lecturer on parental education and directed numerous study classes for parents. She was one of the founders of the Parent Teacher Association

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Courthouse Beat

(Continued from Page 12)

master to turn his horse around. As Defendant began to do so, the Defendant's horse backed up three to four steps and collided with a horse and buggy driven by non-party Schwartz. Schwartz's cart tipped over spilling Schwartz onto the ground. Schwartz's horse ran out of the warm-up area at full speed, down an alley, toward the horse barn, into a bench in the mall area of the fairgrounds and continued on into an alleyway wherein Plaintiff stepped in front of the horse and threw her arms up and yelled "whoa." Plaintiff asserted she tried to get out of the horse's way by jumping up on a curb, but that the horse did not stop and ran over her leg. Plaintiff, approximately 30 years old, claimed permanent knee injuries from the horse stepping on her right knee. Medical bills: $1,442. No lost wages. Plaintiff's expert: Thomas Anderson, M.D. No defense expert. No settlement demand. No settlement offer. Three-day trial. Plaintiff's attorney: David C. Engle. Defendant's attorney: Carl A. Anthony. Judge: Crawford (Thompson). Filomena v. Dougherty, Case No. 98CVC-08- 6269 (1999).

Verdict: $0. Slip and fall. Plaintiff, age 60, claims she slipped and fell injuring her left knee at the Wendy's on Stringtown Road. Plaintiff did not report the fall to Wendy's until several months later. Plaintiff's key witness was a mentally retarded employee of Wendy's whose competency was challenged by Wendy's. The court allowed the employee to testify after two psychologists issued conflicting opinions as to his competency. Medical bills: $45,000. No lost wages. Plaintiff's experts: Paul C. Murphy, M.D.; Robert Quintas, P.T.; Gerald S. Burko (safety consultant who was excluded from testifying following a Rule 104 hearing). No defense lay or expert witnesses. Settlement demand: $250,000. Settlement offer: $0. Five-day trial. Plaintiff's attorney: Michael Garth Moore. Defendant's attorney: Edwin J. Hollern. Judge: Connor. Eller v. Wendy's International, Case No. 97CVC-03-4030 (1999). Plaintiff has appealed, Case No. 99APE-11-1273.

Verdict: $0. FELA. Plaintiff was a car repairman for Defendant since 1956. Plaintiff claimed that Defendant repeatedly exposed him to excessive and harmful cumulative trauma to his hands, wrists and arms resulting in carpal tunnel syndrome. Plaintiff's experts: Michael Todd Wilson, D.C.; James A. DeWees, M.S., C.P.E. (ergonomics). Defendant's experts: Mark D. Grabiner, Ph.D. (biomechanics); Duret S. Smith, M.D. Three-day trial. Plaintiff's attorney: Howard M. Hackman. Defendant's attorney: Kevin C. Alexandersen. Judge: Hogan. Crawford v. Norfolk & Western Railway Co., Case No. 96CVC-12-9761 (1999).

Sketches of Influential

(Continued from Page 13)

of Linden Heights, and was past president and founder of the Linden Heights Chautauqua Club. She was also chair of the educational committee of the Columbus Federation of Women's Clubs, and legislative chair of the Women's Association of Commerce.

Mrs. Valentine was a director of the Columbus Chapter, Daughters of the American Revolution, and state chair of legislation, Daughters of the American Revolution. She held membership in the McGuffey Society, League of Women Voters, Women's Christian Temperance Union, Women's Auxiliary of the American Legion, Raymond Scott Post, J. C. McCoy Women's Relief Corps, Women's Republican Club of Ohio and 17th Ward Republican Club. She was past matron and a trustee of the Linden Heights Chapter No. 463 Order of Eastern Star. In 1929, she was president of the 17th District of Ohio Order of Eastern Star.

Mrs. Valentine was an active member of the Linden Methodist Church and a Sunday school teacher for more than 25 years.

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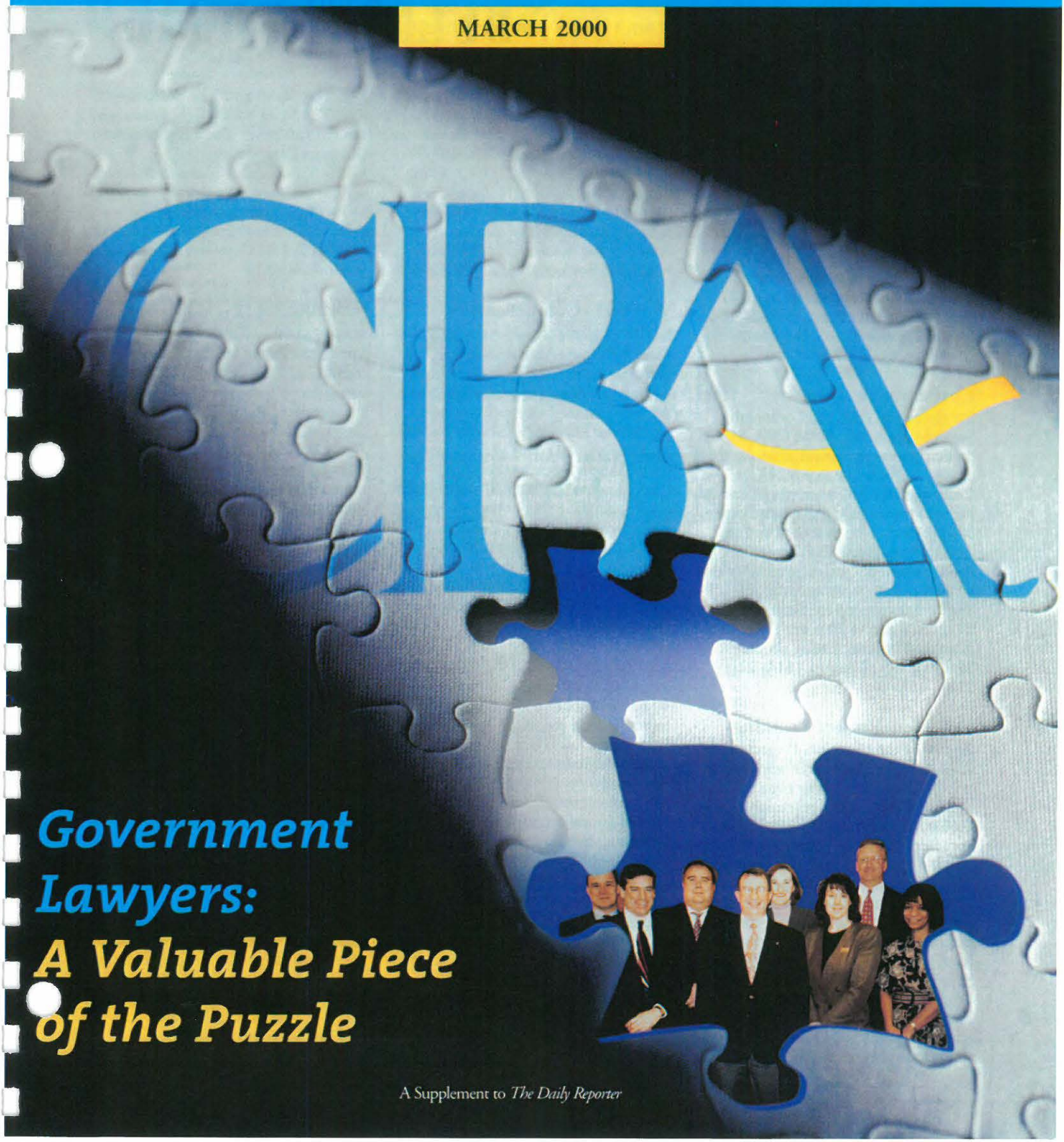

Government Lawyers: A Valuable Piece of the Puzzle

A Supplement to *The Daily Reporter*

Chapter Six: Sketches of Influential Women of Franklin County, Part Two

By Mark Kitrick

Dora Sandoe Bachman was the first woman to graduate from a law school in Ohio, and the seventh woman admitted to the bar of this State.

The firm of Bachman and Bachman was formed when she married Mr. Bachman in 1894. Mrs. Bachman received her degree of LL.B. from The Ohio State University the previous year. Born in Tiffin, Ohio, Mrs. Bachman received most of her girlhood schooling at and near Pittsburgh, Pennsylvania. She returned to Ohio to attend Ada Normal School and after teaching in Pennsylvania traveled by horse to Columbus to attend The Ohio State University.

Mrs. Bachman was widely known in suffrage work and held offices in city, county and state organizations. In 1912, she was a representative at the Women's Suffrage Congress at Washington, District of Columbia. She was elected to the Columbus School Board in 1908 on an independent ticket, where she served for eight years. She was the first woman to be chosen to that body and the first woman to hold the office of president of that organization. Mrs. Bachman held various offices in the League of Women Voters and was honored in 1929 by being made a life member of the National Parent-Teachers Association.

During World War I, Mrs. Bachman was in complete charge of the Social Hygiene work in the Columbus district. She was recognized as an expert in legal matters of a domestic nature and was a candidate in 1928 for judge of the Court of Domestic Relations. In her connections with the Agricultural Extension Department of Ohio State University, she was a frequent speaker at the department's programs. She was a member of Kappa Beta Phi sorority and The Altrurian Club.

Mark Kitrick

After her partner-husband's death, Mrs. Bachman carried on the firm of Bachman & Bachman alone until June of 1929 when their son, Robert E. Bachman, was admitted to the bar and joined her. She continued as senior member of the firm until her death in 1930. Young Mr. Bachman continued the firm name.

Another son, Richard Sandoe Bachman, born April 25, 1912, survived, and attended The Ohio State University. He was a graduate of North High School.

Lucinda Neiman Madden was one of the celebrated founding members of the Women Lawyers of Franklin County, and one of the organization's esteemed past presidents. It seemed that her birth on Independence Day, 1899 was especially appropriate as it reflected her personality and career. After working diligently during the day and then attending night school, Mrs. Madden graduated from the Columbus College of Law and began practicing law in 1929. Initially she associated herself with Clayton McCleary; consequently, she practiced law with former Columbus City Councilman, Roland Sedgwick, until he died in 1974. Thereafter, Mrs. Madden finished her practice with Frank Miseta until 1992, the year of her death. She died the week before Christmas at age 93.

Mrs. Madden was well known and considered an amicable and industrious worker with a strong work ethic. Her practice was in the areas of probate and estate planning and she had a farrago of clients who held her in the highest honor.

In addition to a very busy and successful law practice, she was seriously involved in the Columbus community. For instance, she was a loyal member of the Reorganized Church of Jesus Christ of Latter Day Saints where, among other things, her love of music led her to direct the congregation's children's choir. She also was very active in the Columbus Bar Association. Further, she was an active member of the organization called ZONTA International of Columbus; in fact, she was ZONTA President from 1946-1984, some 38 years! Her Y.W.C.A. involvement was outstanding in that she was a cabinet member of the Academy of Women of Achievement and Director of the Awards Ceremonies. Considered avante garde at the time, she was also a celebrated member of the Planned Parenthood organization.

Her devotion to her clients, her fellow members of the bar and especially her support of women attorneys was legendary. She always had time for her peers and throughout her life many women were proud and honored to call her either a mentor or friend, or both. Even with her devotion to the law and her community, Mrs. Madden was such an avid traveler that her adventures took her to China when she was 86 years old.

As the spirit of these accomplished women, their life work and their contributions to our community live on in our local bar, their trail blazing activities should be an inspiration to all of us.

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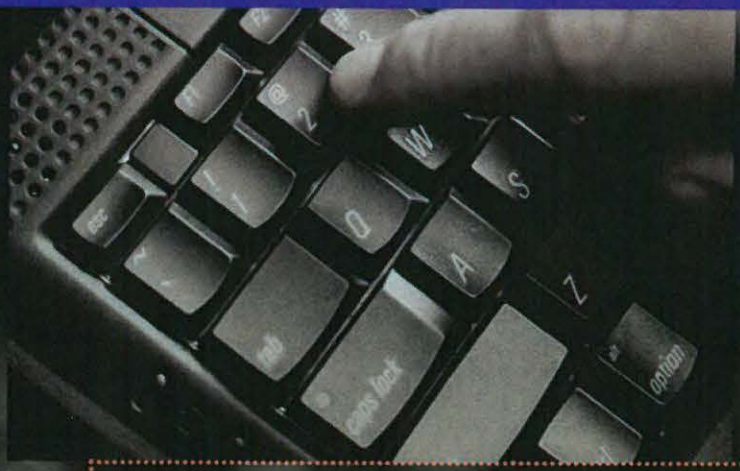

Log on to the Future!

g on to the future. Log on to the future. Log on

A Supplement to *The Daily Reporter*

Member Email Address Book Inside

Chapter 7: The First Generation: Franklin County's Bench and Bar

By Mark Kitrick

Twenty-four year-old Gustavus Swan crossed over to the west bank of the Scioto River, mid deep in mud, wondering why he ever left his comfortable surroundings in Concord, New Hampshire to come to this god-forsaken Ohio country by hoof, wheel and keel to practice law. He had encountered wild animals, swam swollen streams, and fought bandits—all while armed with the customary saddlebag containing his pistol, some law books, dry bread, cheese, dried venison and a half bottle of old whiskey. He questioned his decision to open a law office in this small borough of Franklinton, county seat for Franklin and possibly future capitol of the state, especially when he learned that there was no church, no school, no pleasure carriages and no bridge in the whole county. He found that the small community exported hogs, cattle and horses. With about 200 people living in the center of Ohio, Gustavus decided to open an office, for certainly, he figured, there was as much legal opportunity as there was general roughness and fighting in the burgeoning settlement. What should one expect for 1811 when fighting and drinking were praiseworthy, old people and invalids were protected, and hospitality was a virtue transcending all classes.

Swan watched his law practice and legal fraternity grow over the next few years. Franklinton was becoming successful. It had now a courthouse, the old log jail was replaced, it finally had a post office so now he did not have to wait for horseback to arrive only once a week and, as times were good, the town meeting hall was made with brick. His brethren included Colonel John A. McDowell, later a president judge of the court of common pleas; Colonel William Doherty, later speaker of the Ohio Senate; Judge David Smith, co-publisher of one of the early newspapers, the Ohio Monitor, and later an associate judge of the court of common pleas; Thomas Backus and Orris Parish came from New England, to name a few. The attorneys would often congregate at the local taverns and engage in animated discussions about the law, citing mostly English authorities, and their repartee, witticism and overall knowledge of human behavior, were legendary.

A certain amount of camaraderie was necessary for these rugged times. When practicing "on the circuit," the lawyers traveled horseback with the judges to the courts of foreign counties. They hoofed through swamps and streams wearing leggings and a camlet, a Scotch plaid cloak over their lower bodies, to protect themselves from the elements and the wilderness. The court system was designed so that there were three judges of the Supreme Court who went once a year to each county with about seven and a half days to spare per visit. The state had three Common Pleas circuits, with the president judge visiting all the counties of his circuit.

There were three courts at home. The Supreme Court annually would hear matters of divorce and alimony, title to land controversies, and matters worth more than $1,000. There was an Appellate Court both in chancery in land and common law and criminal jurisdiction. Wills and rights of administration would be heard as well. The Court of Common Pleas dealt with common law and chancery jurisdiction, reviewed justice of the peace of the township proceedings which usually involved fighting cases and minor disputes of money and territory, handled crimes involving capital offenses, and conducted probate and guardianship cases. Further, there were non-judicial duties which included appointing county officers, road openings, and granting tavern licenses—basically the work of what became the board of county commissioners. Four men comprised the common pleas court. Only one, the president judge, was a lawyer. The others were laymen selected for their administrative prowess.

It was against this court set up that Gustavus Swan studiously buried himself in his law books and became a "brief type" or "pleadings" home lawyer. As he became enlightened in land law, he realized that the "High Bank," the east side of the Scioto River, was the future, and thus after three years, he migrated to Columbus. His relocation was advantageous as he began to be employed in important and profitable cases where he fought formidable lawyers throughout the state, like Philemon Beecher and Thomas Ewing. By 1817 he had returned from the legislature after being the first representative of Franklin County; it was then that he was appointed by the solons as president judge of the circuit of common pleas court. While traveling to Adams, Ross, Fairfield, Gallie, and Franklin and becoming Ohio's foremost jurist, Judge Swan found time to publish scholarly legal articles and books on laws and land.

As Judge Swan labored in the circuit, his nephew, Joseph Swan, came from New York by horse and buggy to tend to the judge's private practice which eventually grew so much that when the judge retired from the bench and restarted his civil practice with Joseph, his work included Fayette, Madison, Union, Delaware, Pickaway and Fairfield counties. By the 1830's, the growth of the bar was par with the growth of the city. Many formidable adversaries appeared in the local courts, including the pioneer attorney, Orris Parish, who was most famous,

Mark Kitrick

(Continued on Page 18)

Virtual Reality

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of the law, but they walk a fine line being careful not to cross into the practice of law (we hope). Rather, they are offering "legal information" as opposed to advice. I doubt very much that the average consumer makes that distinction – information and advice are one in the same to those trying to draft their own will or handle their own divorce.

I have no doubt that more and more legal "information" will be available on-line for little or no cost to consumers. Does this threaten the legal profession? Probably not. What it does, however, is change the way attorneys currently practice and force attorneys (and bar associations) to think very differently about what we do. After all, your universe of competition just got bigger! Local law firms are now competing with national law firms with web sites offering 24-hour access.

Security is also an issue. Attorney-client privilege and confidentiality are among the most important aspects of the attorney-client relationship. The assurance that communications will remain confidential is what encourages many people to seek legal assistance. And, although many Internet sites boast the highest level of security, it is no different than protecting one's own home – there is only so much you can do, but if someone wants to get in, it will happen.

In addition to web sites, other technological advances will change the day-to-day practice of the 21st century attorney. Judge Bessey recently told the Common Pleas Court committee that electronic filing is the wave of the future. He suggested we are nearing a paperless court system. In fact, many courts are already requiring electronic filing. At some point, this will become the norm. Yet, many attorneys are understandably cautious about transferring legal documents via e-mail.

Digital signatures enable documents to be transferred electronically with virtually no risk of interception or alteration. As the documents are transferred, they are encrypted such that upon receipt, the recipient can identify whether it is coming from the source that professes to have sent it. It also identifies whether the document was "intercepted" at some point during transmission and will alert the recipient of its authenticity.

In an effort to "roll" with this technological evolution, the CBA has invited the MIS/IT directors from local law firms to join us monthly for discussions about technological advances in the law firm. While this committee serves as a forum for the "techies" to talk shop and compare notes about the latest greatest technology, it also provides our staff with insight into law firm considerations with respect to technology. I have sat in on two of these sessions, and I have already learned more about technology trends than I could have ever anticipated.

The CBA is already beginning to think about how technology will impact how we serve our membership. We are working to create a technology committee that will serve as a forum for our members who are interested in the latest courtroom advances and future trends in the practice of law. If you would like to serve on this committee, please e-mail me your thoughts and ideas about what the committee can accomplish (alex@cbalaw.org). I'd really like to hear from our membership about how technology is impacting your practice, and discuss ideas about how the CBA can help.

There is no doubt that effective utilization of technology will help us better serve our members. Yet all of this comes at a cost, and one of the other things I am learning about technology is that it's expensive. By now, you have heard that a dues increase has been approved for the 2000-2001 fiscal year to help cover the costs associated with these advances. We have come to realize that technology is not something to be resisted. We must apply it in an increment uncommon to professional associations. If we are timid, we will be rendered irrelevant by you and by the public. I have one of those store-bought quotes on my desk that seems appropriate here: "We cannot direct the wind, but we can adjust the sails."

Chapter 7

(Continued from Page 11)

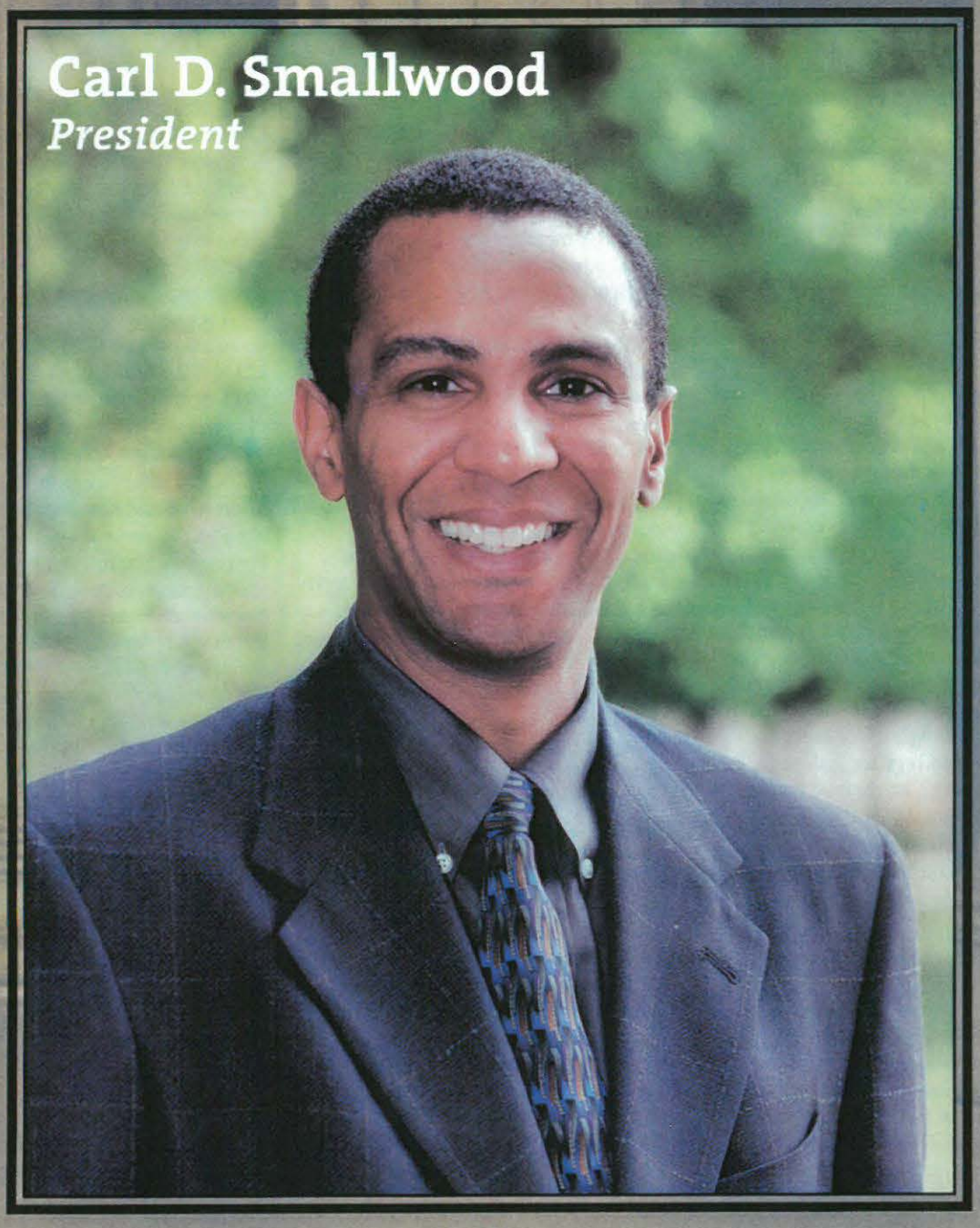
not as a demurrer attorney like Judge Swan, but as a "jury lawyer." With few diversions for the public, a trial was a great event, of keen interest to large numbers of the community. The lawyers entertained and focused on pleasing their audience. With no court reporter and thus no record, trials usually were short and to the point. This was also a time when a judge would take a recess in the middle of a trial so Parish could make strong or fervid pleas to his jury.

The year was 1843. Judge Swan, defending William Clark for the murder of a penitentiary guard. His defense, insanity. The prosecutor, Noah Swayne, was considered brilliant. During the trial Judge Swan assuredly informed the jury that "he had never had a client hung and if Clark was, he never would put his foot in the court house again as a lawyer." After Clark was hanged, Judge Swan was good to his word and spent his last years with the historic Franklin bank, which eventually became a state bank of Ohio, where he became president. Meantime, lawyers such as Alfred Kelley drafted a bill organizing the state bank of Ohio; John G. Miller became mayor of Columbus and then postmaster; and Samuel C. Andrews, a literate, able and poetic lawyer fought hard in the circuit courts—all making this an exciting time of growth for Franklin County's bar and bench. (Next Chapter - The Second Generation)

BARbriefs

COLUMBUS BAR ASSOCIATION

JUNE 2000



A Supplement to *The Daily Reporter*

Chapter 8: The Second Generation: Franklin County's Bench and Bar

By Mark Kitrick

Justice Joseph R. Swan was trembling inside. He must muster all his courage; the strength of his fear, for his decision was the swing vote in a deeply divided court. The ruling would have nationwide ramifications. It was 1859 and the Justice, the nephew of Gustavus Swan, was now completing his final term as Associate Justice of the Ohio Supreme Court and was one of the leading attorneys of Franklin County's second generation. The case before him, *Ex parte Bushnell*, 9 Ohio State 198, was "surcharged with political excitement," with the Dred Scott decision, the constitutionally-upheld Fugitive Slave law and the Kansas-Nebraska bill creating a formidable backdrop for his ruling.

Bushnell and Langston rescued a fugitive slave near Wellington, Ohio, and then were arrested, tried and convicted for violating the Fugitive Slave law. A writ for habeas corpus is filed and Governor Chase, in response, publicized that if the Ohio Supreme Court orders the prisoners to be set free, he would require compliance of the order. It was a defiant act because Chase fully realized that the federal marshalls were on the ready to re-arrest them, if released. The decision would involve an archetypal struggle between state and federal power, between constitutional enforcement and possible secession, between obeying the law and one's personal sense of justice, any one argument instilling passion and appeal.

When Justice Swan ultimately remanded the prisoners to jail, he wrote:

"For myself as a member of this court, I disclaim the judicial discretion of disturbing the settled construction of the Constitution of the United States; and I must refuse the experiment of introducing disorder and governmental collision to establish order and even-handed justice. As a citizen I would not deliberately violate the Constitution or the law.... But if a weary, frightened slave should appeal to me to protect him from his pursuers, it is possible that I might momentarily forget my allegiance to the law and Constitution and give him a covert from those who were upon his track.... And if I did it, and were prosecuted, condemned, and imprisoned, and brought by my counsel before this tribunal on a habeas corpus, and were then permitted to pronounce judgment in my own case, I trust I should have the moral courage, before God and the country, as I am now compelled to say, under the solemn duties of a judge bound by my official oath to sustain the supremacy of the Constitution and the law, 'the prisoner must be remanded.'"

Justice Swan's seven years on Ohio's high court followed more than a decade as president Judge of the Common Pleas Courts. His retirement led him to become President of the Columbus & Xenia Railroad Company where he also authored numerous books on probate issues, powers and duties of justices of the peace, and the Ohio revised statutes. His accomplishments made him a legend, by overwhelming legal consensus.

During this time Justice Swan had served in a new era, when reforms in the law meant that judges were now elected by the people, pleadings were simplified, the distinction between law and equity was all but erased, the Ohio Supreme Court of five judges was now of last resort, probate courts had their own jurisdiction and the Federal Court by congressional fiat had a northern and southern district in Ohio. Columbus had become incorporated, in the 30's and 40's, and the burgeoning population of more than 18,000 led to the formation of a mayor's court and the assembly of a new courthouse on the old Indian mound at the intersection of Mound and High. Greatly accomplished were the second-generation peers of Justice Swan. To illustrate, there was Noah Swayne, strikingly calm and pleasant yet superb jury lawyer who quit the Jeffersonian Democrats to join the Republic Party in support of Lincoln for president. He was then appointed at age 57 to the U.S. Supreme Court, partly because he was considered "one of the ablest lawyers in Ohio." He wrote a series of historic opinions during his 19-year tenure, many dealing with the 13th, 14th and 15th Amendments, and during the Civil War, he wrote about the rights of belligerents, of confiscation, of prize and of blockades. His influence was enormous.

Meanwhile, there was James Wilcox, son of Phineas Wilcox of the first generation. Phineas had one of the finest libraries "in the west" and was a teacher and mentor to many other well-known attorneys of the time. James went on to further the family legacy by becoming Columbus's city solicitor, creating the Columbus City Charter, later becoming general attorney for Columbus and Hocking Valley Railroad Company, and further compiling in 1874 the "Railroad Laws of Ohio." The magnitude of his legal work was remarkable.

Indeed, when surveying the Columbus bar, pride should justifiably swell when taking into account the production of numerous accomplished lawyers, such as Chauncey Olds, attorney general of the State of Ohio; Leander Critchfield, reporter of the Ohio Supreme Court; John Andrews, a civic leader and law partner of Joseph Swan; Allen Thurman, Robert Warden, justices of the Ohio Supreme Court (Thurman was also a U.S. senator); Henry Stanberry, the first attorney general of Ohio; William Dennison, Governor of Ohio; George Converse, Speaker of

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Pitfalls

(Continued from Page 10)

preferable to a single life expectancy. This is because the joint life expectancy table sets the minimum distributions lower due to the fact that the joint expectancy of two people is always longer than the life expectancy of one of the individuals taken singly. Larger withdrawal amounts can always be taken out without penalty.

Penalty for Withdrawals Less Than MRD

Still after all this, if the MRD amount is not properly calculated or not made, the IRS will assess a 50 percent penalty on the difference between the MRD and the amount of the actual withdrawal. For example, if the MRD were $7,600 and the IRA owner failed to take a withdrawal, the penalty would be $3,800. That is on top of the ordinary income taxes owed on the $7,600 MRD – an unpleasant event.

Choosing a Beneficiary

Designating an IRA beneficiary should also be carefully considered. Not only does the appointed beneficiary normally have an impact on how the MRDs are calculated, the beneficiary choice can impact the tax deferral feature of the IRAs.

The following are some general effects of designating a certain beneficiary once the IRA owner dies, but before MRDs start:

Beneficiary is a Surviving Spouse

- The spouse can roll over the funds into his/her own IRA and not take distributions until the spouse turns 70 ½. Then the spouse can make withdrawals based on his/her life expectancy or the combined life expectancy of the spouse and a new beneficiary. Furthermore, the spouse can make new deductible IRA contributions to this account.
- Alternatively, the spouse may leave the funds in the decedent's name. Distributions can be taken at any time or do not have to begin until the decedent would have reached 70 ½.

Beneficiary Who is Not a Surviving Spouse

- May not roll over the funds into his/her own IRA.
- Cannot make deductible IRA contributions to that account.
- May take payments from the account over the life expectancy of the beneficiary as long as the payments begin within one year of the IRA owner's death. If there are multiple beneficiaries, such as children, the oldest beneficiary's life expectancy is used. In this case the IRA owner should consider splitting the IRA into equal separate IRAs for each child.
- If the life expectancy method is not timely chosen, then the non-spouse beneficiary is required to withdraw the entire account within five years of the year following the IRA owner's death.

Beneficiary Choices if MRDs Started Before Account Owner Dies

- Generally, if the deceased IRA owner was receiving payments according to an earlier MRD election, the beneficiary must receive distributions at least as rapidly. One exception would be if the beneficiary were the surviving spouse who elected to roll over the funds into his/her IRA.

Beneficiary that is a Charity

- If the IRA owner is charitably inclined, this is one of the best assets from which to make charitable contributions because all the money goes to the charity, thus avoiding all income and estate taxes.

Common Pitfalls

No doubt IRAs are a very attractive way to save for retirement income needs. It is, however, important to understand the consequences of making or not making certain elections and naming certain beneficiaries. Keeping this in mind, some of the most common mistakes to avoid are:

- IRA owner not making an MRD election other than the default recalculation method.
- IRA owner not designating a beneficiary or naming the estate as beneficiary.
- IRA owner not properly completing a beneficiary designation form.
- IRA owner using a standard beneficiary designation form to handle a complex beneficiary situation when a custom-drafted form should be used.
- IRA owner not correcting a beneficiary designation after a death or divorce.
- Beneficiary failing to elect a lifetime payout option available to him or her within one year of the IRA owner's death.
- Beneficiary failing to continue MRDs by December 31 of the year following the IRA owner's death and thus be subject to the 50 percent penalty.
- Beneficiary accepting a check from the bank or other distribution for the entire account, destroying the deferral opportunity.

Many, many, many other rules apply to IRAs. Given specific circumstances, results and outcomes can vary widely. Planning in this area is paramount and failure to properly plan using IRAs is fraught with pitfalls.

William A. Leuby, JD, CPA, CFP is a senior vice president of Hamilton Capital Management, Inc., one of central Ohio's largest fee-only financial planning and investment management firms. Bill, an active CBA member, welcomes questions, comments or future article ideas. He can be reached at (614) 273-1000 or wal@hamiltoncapital.com.

Second Generation

(Continued from Page 11)

the Ohio House of Representatives who "practiced nearly 50 years and undoubtedly had more cases than any lawyer at the bar"; Lorenzo English, 11 years as mayor of Columbus, county treasurer, city councilman and lawyer "in most of the important cases of the county." Their records are daunting, but their astonishing careers should conjure up enticing and new legal opportunities for each of us.

It seems logical then in 1869, against this culmination of legal events and growth that this second generation desired to form an association called the Franklin County Bar Association with Judge William Baldwin as the first president. Their goal was to share ideas and knowledge and help each other through these troubling, traumatic times when courts were battling the legislature and technology was changing lives and law so profoundly that the implications were frightening, yet exciting. It was a wise and admirable move to more formally unite, so that these sincere and accomplished lawyers, who were indeed impressive, could produce a more formal subscription for enforcing justice.

(The chronicles continue in the next chapter – The Third Generation.)

BARbriefs

COLUMBUS BAR ASSOCIATION

July/August 2000

Professional Ethics and Grievance Committee

A Supplement to *The Daily Reporter*

Chapter 9 – The Third Generation: Franklin County's Bench and Bar

By Mark Kitrick

Richard A. Harrison's last steps were taken in the year 1904 at the age of 77 just after he filed a scholarly brief with the Ohio Supreme Court, a court that he had previously been asked to sit on but had declined. Mr. Harrison, the 3rd president of the Ohio State Bar Association (formed in 1880), practiced for 31 years, living up to his belief that the "law is the basis of public liberty and also the safeguard of each individual citizen's public and private rights and liberties." It was not uncommon to find Mr. Harrison arguing his client's position for two days in an appeal, citing literature, morals, and current events as well as the law.

Before practicing law, he was a solon who introduced bills regarding guardians and wards. During the Civil War he went to the Ohio Senate and became an associate of James A. Garfield. There he participated in the drafting of the historic Ohio Resolutions supporting the Union cause. As his law practice thrived, he along with his two partners, Judge Joseph Olds of Circleville and Mr. Marsh, Harrison's son-in-law, "secured the largest practice in central Ohio."

Yet, despite his prescience, profound legal knowledge, and leadership exhibited in front of what had now become a seven judge panel at the Ohio Supreme Court, even Mr. Harrison could not have predicted the wholesale changes that would transpire during the next, or third legal generation.

It is now 1912. World news headlines are startling: The Titanic Tragedy Entombs 1,513 Passengers and Crew in the Atlantic; Robert Scott Reaches the South Pole; Turkish Rule in the Balkans Is Destroyed; Suffragettes Smash Shop Windows in London; SOS Signal is Universally Adopted; and German Scientist Wegener Proves that All the World Continents Were Once a Single Landmass Called Pangaea.

Against this international backdrop, Theodore Roosevelt led the Progressive movement which mandated amendments to the Ohio State Constitution affecting our judicial system. This was the time that the court system began to assume an identity with which we are now more familiar. To illustrate, the Ohio Supreme Court could now review writs of prohibition, questions arising under the U.S. Constitution, cases of public or general interest, cases of felony upon leave granted, cases originating in the Courts of Appeals and cases where the Courts of Appeals had conflicting opinions.

The district court was now called the "Court of Appeals" and had three judges elected from a circuit of counties with much the same original jurisdiction as the Supreme Court, except for certain constitutional matters. Franklin County's contribution to this court was Gilbert Stewart, who later served as chief justice of the Circuit Courts of Ohio. After retirement, Judge Gilbert taught medical jurisprudence at Starling Medical College and federal practice at The Ohio State University College of Law. He also wrote the *Ohio Citation Digest* and a treatise on legal medicine. Later, Franklin County conferred a second circuit court judge, James Allread.

Columbus was now more than 150,000 citizens. The stirrup (or circuit) practice was totally obsolete, primarily due to the railroad and automobile replacing the horse and exciting new communication via the telephone and telegraph. Corporate work became more commonplace and complex than land title law. Specialization was beginning to be required. The office lawyer was becoming all the more removed from the ways of the trial lawyer.

The county, pursuant to legislative fiat, now had six judges whose reputations dominated the state bench. The probate court now dealt with lunacy [insanity] matters, the conduct of condemnation proceedings, and the assignments of insolvent debtors for the benefit of creditors.

The mayor of Columbus, later Judge Samuel L. Black, became a national fugleman of the juvenile court movement. In fact, he designed and wrote the legislative act which created the Juvenile Court. His domination and foresight in this new field brought him a high level of admiration and esteem.

The old mayor's court was subsumed by the police court which eventually became a part of the Municipal Court of Columbus, all accomplished by legislative deed. This court had special, limited jurisdiction to matters involving amounts less than $750, and in criminal offenses which were traditionally dealt with by the police court. It had a chief justice and three judges.

Change also occurred in the federal court design, wherein the Southern District was divided into an Eastern and Western Division. President Roosevelt appointed John E. Sater of Franklin County as judge for the Eastern Division. Sater, who in his earlier years studied under the tutelage of J.H. Collins, a leading lawyer of the State who represented the B&O Railroad Company, was formerly of Sater Seymour and Sater.

More than 350 lawyers were now practicing before the bar and growth was continuing. Many individuals made their historical imprint, like Dan Ryan, a member of Ohio legislature and secretary of state and co-author of

Mark Kitrick

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PEC

(Continued from Page 7)

Finally, praise should go to the leadership of the Committee, Art Marziale and Christy Swope. Bar Counsel Bruce Campbell, Assistant Bar Counsel Patricia Block, Shelli White and the rest of the CBA staff all put in a lot of work behind the scenes. They make our jobs on the Committee more productive and help keep us focused on the myriad of different fact situations that come before us. Somehow I think these situations will always be changing, and while not always for the better, it certainly keeps the work interesting.

Joseph R. Cook is senior vice president and counsel for Banc One Management Corporation and a member of the CBA Professional Ethics Committee.

To the Edge

(Continued from Page 8)

potentially giving rise to disciplinary action, address them. If you recognize in your peers the potential for future problems, offer your assistance. If you are presented the opportunity to participate in the disciplinary process (other than as the respondent), embrace it. The system depends on our participation. It is largely a system reliant upon self-policing by the members of our fraternity. Your participation and input insures that the process remains fair, just and effective.

Staff Attorney

(Continued from Page 14)

you interested in clerking, and whose parents gave a name that could never be found on key chains when you were younger, I highly recommend that you send a resume to a judge that shares your pain!

Closed Doors

(Continued from Page 6)

recommendations. Either side may file objections, which will then be heard by the Supreme Court. If no objections are filed, the Supreme Court issues an appropriate sanction.

In addition to the functions of the Ethics Committee with the disciplinary process, the ethics department also offers other services to attorneys. An attorney with an ethics question can call to request an advisory opinion. We try to respond by providing the attorney with materials such as Board of Commissioners Advisory Opinions or relevant articles that guide an attorney through his or her ethical dilemma.

So that is the workings of the ethics department at a glance. Every day is different, with new questions presented by attorneys and new scenarios raised by clients. Now, I must end this article so I can answer my telephone and see what concerns this caller has and get ready to review the new grievances of the day....

Chapter 9

(Continued from Page 13)

History of Ohio; Emilus O. Randall was a reporter of the Supreme Court for many years and authored some of the finest works on Ohio's history — he later became a professor at the OSU College of Law. And the list of able lawyers could go on and on, a large percentage leading the bench and bar.

What is important to remember is that this was a time of rampant change where a number of good men stepped up to the bar with an obsession for justice, a love of the law, and were able to use the concept of elasticity in molding and sculpting the law. These men wore the mantle of leadership with aplomb, humility and homage to their forebearers, some of whom were their own teachers. These are the lessons of the third generation and their deeds continue to speak to us through the recordings of their works.

Attention M-Z! This is your year!

Plan now to meet your Ethics/Professionalism/Substance Abuse Requirement for the 2000 reporting period.

New Professionalism Requirements for Attorneys

As of January 1, 1998, the Ohio Supreme Court Commission on Continuing Legal Education adopted new Continuing Legal Education requirements. The following is a summary of the new rule:

Attorneys with last names beginning with A through L: As part of your 24 hour requirement, you must obtain at least 1 hour of instruction on professionalism, 1 hour of instruction on ethics and 0.5 hour of instruction on substance abuse by December 31, 2001.

Attorneys with last names beginning with M through Z: As part of your 24 hour requirement, you must obtain at least 1 hour of instruction on professionalism, 1 hour of instruction on ethics and 0.5 hour of instruction on substance abuse by December 31, 2000.

If you have any questions about the new professionalism requirements, please contact the CLE Department at (614) 221-4112

Submitted by Mark Kitrick for the BarBriefs
July of 2000
Legal History Column

Chapter 10: The Legacies of John Mercer Langston

Act One: Scene One Elyria, Ohio, 1853 — it is late in the small room. The cheap candles turn darkness into pale light. The handsome young man, John Mercer Langston, hunkers at his rough oak desk, studiously imbibing the scholarly holdings of the numerous law books he received from Judge Philemon Bliss. He is tired, his eyes red, but the words motivate him, so he is energized. As he silently thanks the Lord for his friendship with the Judge who has allowed him to study law, the muses of the night gently toss a blanket over his eyes to prepare him for another day of study.

John Mercer Langston's objective of hanging his legal shingle collided with seemingly immovable racial forces. He could not gain normal admission to the bar because of his race. So, under the Judge's aegis and Mr. Langston's labor, he was admitted to the Ohio bar in September of 53 at age 24. (b.1829-d.1897) Born in Virginia and then brought to Ohio after his parents died, John Mercer Langston entered the Theology Department at Oberlin College and was the first African-American to enter such a school in the United States. He ultimately graduated from the seminary. Thereafter, he was the first African-American admitted to the Ohio bar.

His accomplishments continued to rise beyond Olympian heights. He became the first African-American to practice before the United State Supreme Court. He traveled throughout the South to set up schools for freed slaves. He was the founder and first Dean of Howard University Law School. He became the president of what is now Virginia State University and was elected to Congress from the Commonwealth of Virginia in 1889. John Mercer Langston's personal and professional accomplishments are humbling and exemplary, ones that any person would wish to emulate.

Act Two: Scene Two Mt. Vernon Avenue, Columbus, May, 1998, 100 years after Mr. Langston's death— an inspired coterie of 10 African-American lawyers assemble early evening to ponder issues and problems affecting them, and to discuss how they can better serve each other and their community. Two previous organizations, The National Council for Black Lawyers and the Robert B. Elliott Law Club, are essentially defunct and it is time to form a new organization for Franklin County. Excited and inspired by the legendary deeds of John Mercer Langston, the new assembly elects Patsy Thomas, Esquire as President and they name their new organization the John Mercer Langston Bar Association. The mission statement is *"promote professional development, networking, mentoring and community activism."*

With Marc Minor as VP, Cynthia Callendar as Secretary, Darren McNeal as Treasurer and Robert Solomon as Parliamentarian, the paid membership has already risen above 50. One of the admirable qualities of this new association, an affiliate of the National Bar Association, is that it represents *all* African-American lawyers in Franklin County, even if not paid members. Consequently, the approximately 345 African-American attorneys in Franklin County are provided bi-monthly newsletters, updates and the opportunity to communicate with the organization. If there are no African-American groups in neighboring communities or counties, individuals from those communities are welcome to join the organization. The quarterly meetings, committee reports and special functions provide valuable insight and support to all African-American attorneys in this county.

The percentage of African-American attorneys in this county is miniscule. A number of factors might explain this reality, but the organization is actively working with our middle and high schools as well as local law schools to encourage more young African-Americans to become attorneys. Although one might argue that there are too many lawyers and this belief may be a dissuading factor, there are certainly not too many African-American attorneys or judges. In this county, for instance, there are only 4 African-American judges, and that includes the federal bench.

The John Mercer Langston Bar Association is well aware of several problems. One, racism exists and we must deal with its ill effects. Two, there is a lacuna of African-American attorneys representing corporations. Whether the African-American attorney forms a corporation or represents a company, there are many capable African-American attorneys who can provide the same quality of legal services that larger law firms have given corporations in the past. This large void needs to be filled. Three, the group would like to further address profiling, and any affects on our community at large.

Not the Final Act

We have been lulled into thinking racism is no longer a significant issue in our society, that prejudice is not as prevalent as in the 40's, 50's, or 60's. And it may not be as blatant in some instances, but its presence must be confronted. President Thomas recalls when she was legal counsel with the Attorney General's office and was in a small county trying to settle a case. She was dressed in a conservative suit, carrying her traditional suitcase when the Judge came out and inquired, "are you waiting for your attorney?"

There is a trickle down influence to a predominantly white legal system. If an African-American attorney represents another African-American and says to that client, the system will be fair to him or her, what will the client think after walking into a courtroom that has a white Judge, a white bailiff, a white law clerk, a white court reporter, and a mostly white jury? How demoralizing could this be to anyone, no matter what race? These actualities do not necessarily mean that the client will not be given a fair trial, or that the people will not understand his or her predicament, or that the operators of the system do not understand racism, or are racists. Rather, it is the appearance or perception that should concern us, as does not perception usually become a reality?

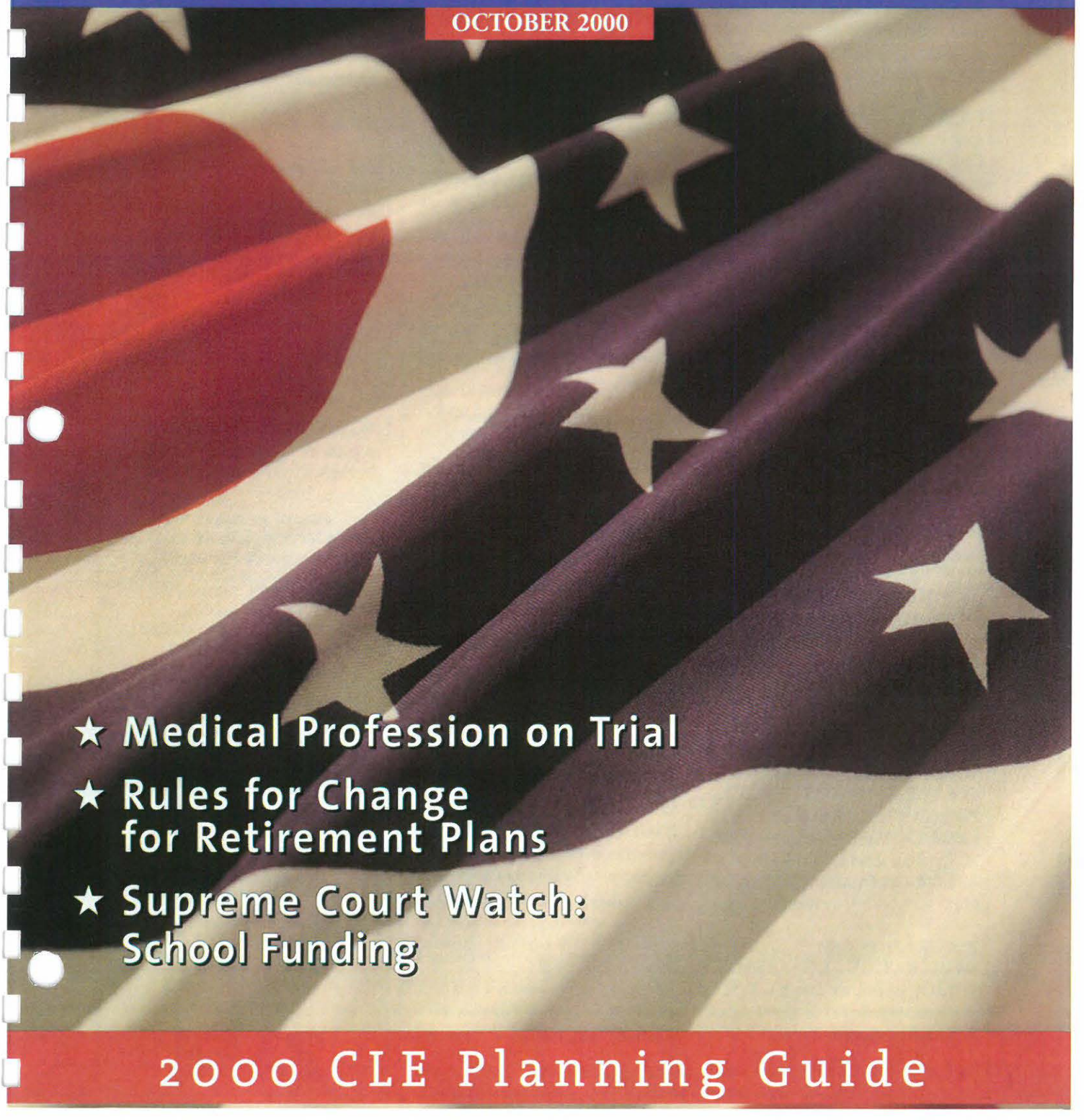
Are we not taught that it is the *appearance of impropriety* with which we must be concerned? These are critical queries that we must contemplate and ultimately answer. As Thomas enunciated, in the end in this country we should try and see each other as Americans and not try to classify each other by color.

The legacies of John Mercer Langston, which are continued by the ambitions and goals of our local organization, the John Mercer Langston Bar Association, should invigorate all of us. We now have concrete steps upon which we can ascend to higher levels of social consciousness. By enhancing our community with superlative conduct, focusing on improving education, communication and understanding each other, the race issue can finally become extinct while egalitarianism and racial harmony can further evolve.

BARbriefs

COLUMBUS BAR ASSOCIATION

OCTOBER 2000



★ Medical Profession on Trial

★ Rules for Change for Retirement Plans

★ Supreme Court Watch: School Funding

2000 CLE Planning Guide

Chapter 11: Ohio Women's Hall of Fame

By Mark Kitrick

Tears of unexpected joy streamed down Mary's weathered face when she heard the news. Her toil, the 18-20 hours of sweat in the shop every day, would ease. Finally. Her tattered amber dress, coiled brown hair, the unkempt appearance of a once appealing teenager were the consequence of years of labor. No time to address her real needs. She was lucky to work and then collapse. Her breathing was labored and wheezy from the dark smoke which had hijacked her lungs. Her three children usually saw her silhouette in the moon's shadows, for they worked too. Mary was told she was only property and so what did she expect. But her heart and mind told her it was all wrong. As wrong as slavery. As wrong as the many things she saw daily in her sweat shop – the beatings, the abuse, the cruelty, the overwhelming sense of hopelessness engraved on the crestfallen faces of her fellow workers. She had dreamed of this joyful day. Now maybe things would be different, maybe...

It was 1852. Mary was happy because the first female labor law in the nation was passed in Columbus when the Ohio General Assembly limited the working hours of women to a 10-hour day.

The legal highlights of historic events for women's rights is a slow trace of social and political consciousness. For instance, it was not until Mary had already died from emphysema in 1887 that *A Married Woman's Act* was enacted in Ohio. It was aimed at securing for a wife the independent control of her property, the right to contract and the right to sue and be sued without the joinder of her husband.

Then in 1913 the Ohio Constitution was amended so that women who were citizens could be appointed as members of boards of state or locally established departments and institutions involving interests or care of women and/or children.

Women could not vote until November of 1920. Three years later in 1923 the Ohio Constitution was amended to permit women to qualify as electors and become eligible to serve on juries. It took until 1959 for Ohio's first Equal Pay Law to be adopted.

In 1965 the Ohio General Assembly authorized the Legislative Services Commission to conduct a comprehensive study of women's status in Ohio. This was the seed by which the Women's Services Division within the Bureau of Employment Services was born and ultimately established by statute in 1970.

Two years later, 120 years after Mary's hours changed, the Ohio Supreme Court in *Jones v. Walker* further embraced the ideals of women's rights and held unenforceable most of Ohio's statutes that dealt with the hours and conditions under which private industry could employ women, including the types of employment and laws affecting women. This step was a continuation of Mary's dream for equal pay and equal rights.

In the hot summer of 1977, five years later, the Ohio International Women's Year held their state meeting in Columbus with 2,778 people attending, out of which a report was published documenting *The Worlds of Ohio Women*.

One year later, 1978, the **Ohio Women's Hall of Fame and Recognition Day** were established. The Hall of Fame exists to this day at 145 S. Front St. Administered by the Women's Services Division and Women's Advisory Council of the Ohio Bureau of Employment Services, it is designed "to provide a public record of the contributions Ohio women have made to the growth and progress of our state, our nation, and our world." The free exhibit deals with women from all walks of life and emphasizes the numerous accomplishments of the inductees.

The legal accomplishments of these many fascinating women are wondrous and too numerous to name in this chapter. But, for instance, did we know about Emily Bissell (?-1948), a native of Delaware, Ohio? Ms. Bissell designed the first Christmas seal in America. As for her life's work, she was a prominent supporter for the state law coming out of Columbus that limited the hours of women in industry and she ambitiously worked toward the creation of Ohio's first child labor commission.

Did we know about Golda May Edmonston (1890-1978) who was born on a farm near Mt. Sterling and then moved to Columbus as a teenager? Ms. Edmonston's prestigious career in the Republican Party began in the 1930s and during this time she was appointed ward committeewoman. She served five terms in the Ohio House of Representatives, was elected to Columbus City Council and chaired the Franklin County Republican Party. She was the first woman named Columbus City Council President and Acting Mayor. Recent inductees include Jo Ann Davidson (1991) and Betty Montgomery (1996).

In a society where historically the power base has been and remains male and white, the accomplishments of the women inducted in Ohio Women's Hall of Fame and those many other women who have unselfishly and without recognition sacrificed their souls to our human evolution become all the more

Mark Kitrick

(Continued on Page 25)

Ghosts

(Continued from Page 10)

also links to forms and to a site to submit and/or review different types of filings related to FCC proceedings, rulemakings, tariffs, and official forms.

Federal Trade Commission (FTC) - *www.ftc.gov/*

For the consumer, the FTC offers a link to the Bureau of Consumer Protection, with links to publications like *Used Cars: How to Get a "Peach" Instead of a "Lemon"* and *Lights! Camera! Rip-Off! How to Tell When a Scam is Born.* You can also file a complaint online about a particular company or organization. For the legal practitioner, there are many links to aid you in your practice. The Antitrust/Competition link provides commission actions — complaints, orders, final actions and matters for public comment. There is information and selected materials to assist in compliance with the Hart-Scott-Rodino Act, as well as links to advisory opinions, policy statements and guidelines. The "Formal Actions, Opinions and Activities" link provides rules and guides, advisory opinions, public commission letters and a litigation status report for federal cases.

Health Care Financing Administration (HCFA) - *www.hcfa.gov/*

HCFA has had a web presence since 1994, at first consisting of only a few hundred files. Now, information is added many times on a daily basis. The "Medicare/Medicaid" links provide specific information for researchers, analysts, consumers and beneficiaries, including statistics, reports, payment rates and chart books. The "Health Insurance Portability and Accountability Act" (HIPAA) link contains statutes, regulations and bulletins related to this legislation. The "Stats and Data" link has actuarial publications and data; health care indicators; national health expenditures from 1960 on; managed care statistics and reports; and an annual compilation of national health care data. From the "Laws & Regs" link, you can obtain laws, regulations and notices regarding HCFA, advisory opinions, hearings, appeals and rulings. There is also a site search box enabling you to search all of HCFA's website.

National Association of Securities Dealers Automated Quotation (NASDAQ) -*www.nasdaq.com/*

In this informative site, you will find quote input on stocks; mutual funds and options; intra-day charts from NASDAQ Composite, DJIA and the S&P 500; daily filings; earnings calls, intra-day and historical charting; and analysts information, including recommendations, earnings surprise, forecast, P/E ratio, earnings growth and more. This site will also link you to Flash Quotes with last sale, net change, percent change and share volume and to symbol look-up. An IPO link will provide you with the latest IPO filings. At the "Listing Information" link, you can locate NASDAQ companies, NASDAQ listing requirements, and IPO summaries.

National Labor Relations Board (NLRB) - *www.nlrb.gov/*

The NLRB site contains weekly case summaries with links to full-text and Decisions and Orders of the NLRB, both slip opinions (volumes 322 - 331) and bound decisions (volumes 300 - 321). There are links to NLRB forms, rules and regulations, and NLRB manuals. The "NLRB Publications" link provides *Federal Register* notices, General Counsel Memorandums, Operations-Management Memorandums and Unfair Labor Practices cases.

Patent and Trade Office (PTO) - *www.uspto.gov/*

This site has greatly improved over the years. You can search for a trademark on the Trademark Electronic Search System (TESS), check the status of a trademark on the Trademark Application and Registration Retreival System (TARR), or apply for a trademark online at Trademark Electronic Application System (TEAS). There are also links to trademark laws, forms, fees, examination guides, rules of practice, the *Official Gazette*, and the Trademark Trial and Appeal Board Manual of Procedure. Patent information is also available through the Official Gazette, and there are links to issue years and patent number searches since 1836, expired patent numbers and withdrawn patent numbers.

Securities and Exchange Commission (SEC) - *www.sec.gov/*

The number one reason to go to this site is to obtain SEC filings from EDGAR. However, there are also other links to non-Edgar documents, including "SEC Digest and Statements." "Current SEC Rulemaking," provides proposed rules, final rules, interpretive releases, and staff accounting bulletins. "Enforcement Division" includes civil suits in Federal court and administrative proceedings before the Commission. "Small Business Information," gives forms and associated regulations. If you are looking for SEC releases, I have discovered the easiest way to find them is to go into the "Search non-Edgar Documents" link and simply type in the release number (for example, 33-7881).

There are many more government agency sites on the Web than mentioned in this article. I encourage you to take a look and notice how they improve with each passing day. Hopefully, this information will take the "trick" out of locating agency information and help you find the "treat" for which you are looking!

Chapter 11

(Continued from Page 17)

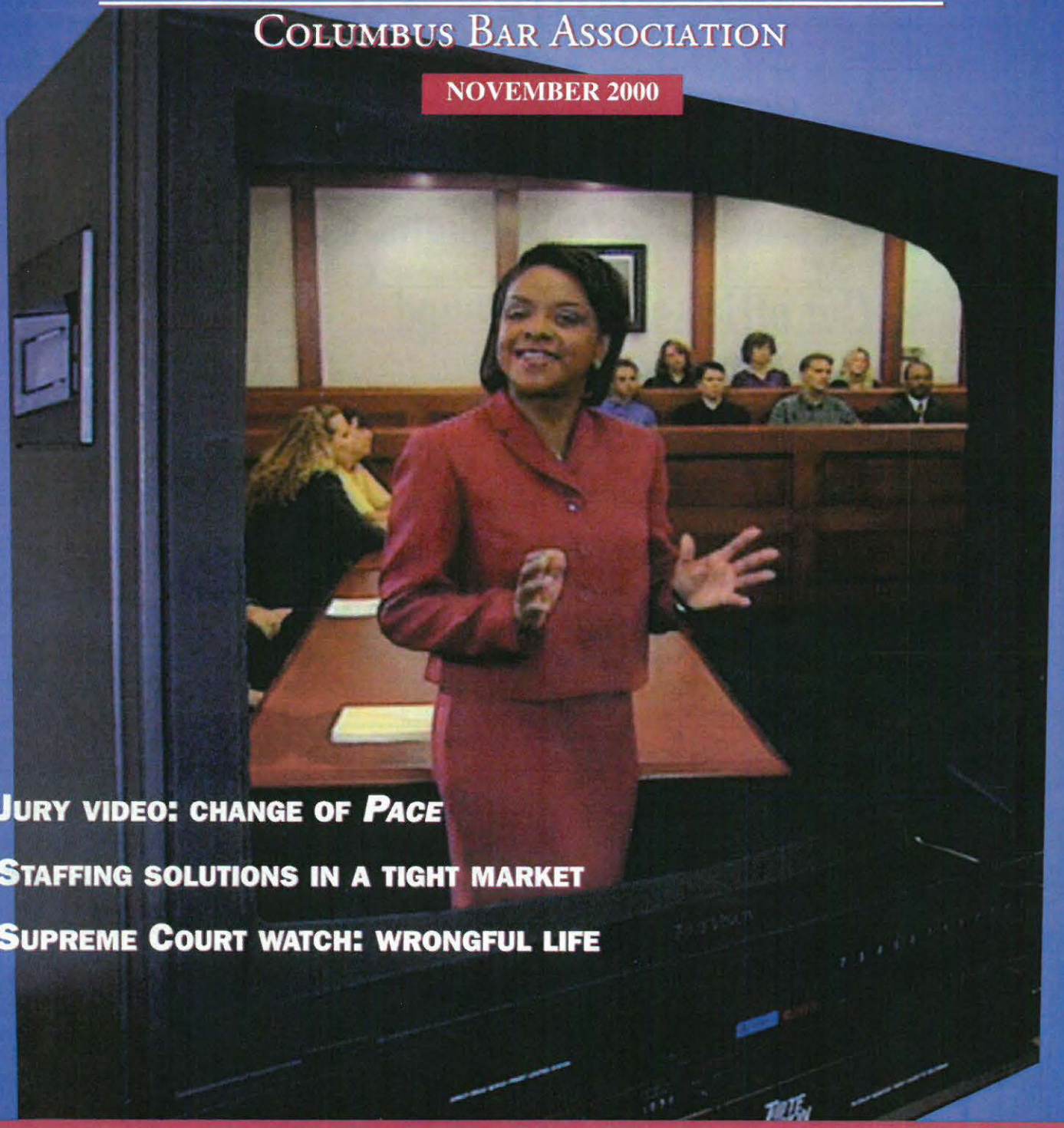
inspirational. On that forlorn day when we might feel oppressed, depressed, or enervated by the trauma of practicing law, we should trek to Front Street and study the faces of these women warriors. We will be reminded of Valhalla, where the souls of heroes slain in battle and others who have died bravely are received. This visitation can only ignite or enhance our passion for justice for all peoples.

Mistakes have been made
and we made them. We apologize for omitting (June *BARBriefs*) from the People's Law School roster, the important volunteer works of T.J. Riley and Scott Simon; and from the Ethics Committee, David Greer. We also incorrectly reported Maryellen Corna's firm (September *BARbriefs*). She is currently with Porter Wright Morris & Arthur.

BARbriefs

COLUMBUS BAR ASSOCIATION

NOVEMBER 2000



- JURY VIDEO: CHANGE OF *PACE*
- STAFFING SOLUTIONS IN A TIGHT MARKET
- SUPREME COURT WATCH: WRONGFUL LIFE

2000 CLE Planning Guide

A Supplement To *The Daily Reporter*

Chapter 12: A Capital Square Tour

By Mark Kitrick

The gaunt, rugged man in a black hat, tie and coat stood proud on the Statehouse's east terrace. As his blood shot eyes gazed out over the grounds, his voice weary from his debate with Douglas, he caught his breath and spoke slowly in a voice that chilled a small group of eager listeners. Little did he know that this was the first of three visits to our Statehouse in Columbus, the last being April 29, 1865, when Abraham Lincoln was laying in state for a day in our Rotunda on route to Illinois.

Our Statehouse, the beautiful buildings that Lincoln witnessed nearly 150 years ago and that many of us see regularly today, are more than stone and mortar, marble and scagliola, fractured light and colored glass. What we now view is the result of a painstaking rebuilding era that cost Ohioans millions, all because of major and perhaps shameful disrepair and neglect of the Capital Square over the last 100 years. As it no doubt was when Lincoln visited, the architectural splendor is now one that anyone would be proud of as one tours the site.

Our tour in these pages will encompass the North and South Hearing Rooms, the Grand Stair Hall, the Atrium, the House Chamber, the Senate Chamber, the Rotunda, and the Senate Building.

North and South Hearing Rooms
When you stroll to the second floor of the Senate Building, you come to rooms where the Senate holds most of their committee hearings. Originally, beginning in the 1800s, the Ohio Supreme Court had hearings here, which continued until 1974. Over time cubicles covered ornate ceilings, and the original bench used by the Court was cut up and stuffed in the attic. Now restored the bench holds nine people and much of the furniture here is original, although refurbished.

Mark Kitrick

The Grand Stair Hall
If you have seen the Paris Opera House, you will find obvious similarities when surveying the construction of white Italian marble, the staircase, and the "back door" entrance to Ohio's Senate Building which was designed in the late 1800s. The four restored ceiling murals represent art, justice, manufacturing and agriculture, and indicate Ohio's emergence as a steel, wheat, corn, and commodity resource. The gorgeous skylight that you witness now was previously so concealed by wood that people literally forgot of its existence until reconstruction.

The Atrium
Finished in 1993, what was once a walkway that was home to an abundance of pigeons, this self-supporting structure is essentially a shelter for those traveling between the Statehouse and the Senate Building. As this structure was built adjacent to buildings that are listed on the National Register of Historic Places, it had to be complimentary. This location is where Lincoln spoke in 1859 for the first time in Columbus. Interestingly, the Ohio Department of Natural Resources has a habitat for peregrine falcons across the street which has affected the pigeons' behavioral patterns.

The House Chamber
Designed by Nathan Kelly, one of the original Statehouse architects, this space, also the same size as the Senate Chamber, holds Ohio's 99 elected state representatives. Originally, it had two side balconies (circa 1861) which were supported by cantilever brackets as opposed to columns. Later in 1891 a third "Ladies Gallery" balcony was added. The marble dais for the Speaker is original, and was carved on site with the walls and ceilings constructed around it. The skylights are from 1861 and the Statehouse color scheme consisting of 25 different colors, including French blue, straw yellow and salmon, were determined to be the first colors and thus what we see are replicas.

The Senate Chamber
Accommodating 33 senators, the sofas are original, as are the marble dais, the mahogany and walnut chair on the dais, and most of the woodwork. There is gallery seating on both sides of the Chamber and visitors may stand in the rear. While there, you will see white Pennsylvania marble columns capped with Corinthian capitals. During the Civil War, the Senate Chamber housed soldiers traveling to battle. Rumor has it that the senators handed paper and pencils to them so "they could write their farewells to their mothers and sweethearts."

The Rotunda
Breathtaking, this 29-foot-wide skylight is filled with a farrago of colors. The center hand-painted Seal of Ohio, as of 1861, has mountains, a sheaf of wheat, a bundle of arrows and a canal boat, which symbolizes the transportation of the time of its design – that being 1847. Equally as beauteous, the Rotunda floor has 5,000 pieces of marble, salmon from Portugal, black and green from Vermont and white from Italy. The center of the floor revisits our U.S. history, showing the 13 colonies. Numerous and original art pieces and sculptures grace the remaining space, including a bust of Lincoln, one that he actually sat for, commemorating his second visit to Columbus when he spoke to the joint session of the Ohio Legislature in the House Chamber in 1861.

The Senate Building
Constructed between 1899 and 1901 and designed to house the Ohio Supreme Court, it originally had two courtrooms and two deliberation

(Continued on Page 31)

Securities Arbitration

(Continued from Page 6)

The parties are, however, entitled to "document production and information exchange." At least 20 days prior to the first scheduled arbitration date, the parties are required to serve on each other all documents that they intend to present at the hearing and a list of witnesses to be called.
The uniqueness of Code of Arbitration Procedure can make even a seasoned litigation attorney feel like a fish out of water when representing the claimant in a securities arbitration. Respondents' counsel, on the other hand, will frequently be well versed in the Code, and he or she likely will have participated in dozens, possibly hundreds, of securities arbitrations. This experience also gives respondents the upper hand in learning information regarding the arbitrators in a particular case.

In light of this difference in experience, it is critical that attorneys representing claimants in securities arbitrations be familiar with the Code; the applicable securities rules and regulations; and the protocol that takes place in securities arbitrations. Attorneys familiar with the typical civil litigation process are surprised to learn that, with very few exceptions, there is no right to appeal the decision in a securities arbitration case. Clients should expect the decision to be absolutely final.

The Award

With arbitration being virtually the exclusive mechanism for the resolution of disputes between securities brokers and their customers, securities arbitration has largely been removed from judicial supervision, except for the confirmation of arbitration awards. Clients should know that arbitrators are not required to make findings of fact or conclusions of law, nor are they required to itemize the components of any award that they render.

Arbitrators are empowered to award everything that a judge or jury could award, including actual damages, interest, attorneys' fees, expert witness fees, punitive damages and an assessment of costs. Arbitration awards assess liability jointly and severally against the broker and the firm.

The Arbitrators

Arbitrators are generally appointed by the regulatory organization where the claim is filed. For cases in which the amount in dispute is less than $10,000, a single arbitrator hears and decides the case. For cases with greater than $10,000 at stake, parties have the choice of a single arbitrator or a panel of three arbitrators. In such an instance, a panel of three arbitrators is usually preferred.

Three-member panels consist of two public arbitrators and one "securities industry" arbitrator, with one of the public panelists serving as the chairperson. "Public" arbitrators are defined as those individuals who do not qualify as "securities industry" arbitrators. A "securities industry" arbitrator is an individual who is currently employed at a brokerage firm that is not the subject of the complaint or one who worked for another firm within the last three years. Retirement from a securities broker dealer also qualifies an individual as an "industry arbitrator."

The parties are notified of the identity of the three arbitrators, along with their employment histories for the past ten years, prior to the hearing. This begins the ten- business-day time clock within which a party can make peremptory challenges. Regardless of the number of claimants or respondents, each side has the ability to use its peremptory to strike any arbitrator for any reason. In addition, parties can make challenges for cause, which are unlimited. If parties exercise strikes, new arbitrators are appointed until a panel is in place.

The Role of the Expert Witness

Experts in securities arbitrations often play a much larger role in an arbitration than in a court case. They are sometimes referred to as the "gladiators of securities arbitrations." A good expert will frequently address three areas in dispute at the arbitration. First, the expert will perform an analysis of the investments at issue in order to render an opinion regarding their suitability for the claimant, as well as an opinion as to whether churning occurred. Second, the expert will review all of the documents produced in the case, as well as the facts, and testify regarding what rules and regulations in the securities industry were broken. Such testimony may include evidence of customer and practice at other brokerage firms. Finally, the expert will calculate damages and will attest to the theory supporting them.

Chapter 12

(Continued from Page 20)

rooms. It was called the Judiciary Annex. Over time it was subdivided and not usable and thus after the restoration plan was adopted, it was re-opened as the Senate Building. You will observe gold and aluminum leafing while you saunter to the offices of the Senate President and the Senate Minority Leader.

Walking alongside Lincoln in our collective imagination, we see the cannons, the Ohio Veterans Plaza, the Christopher Columbus Discovery Plaza and various other statues and monuments. The wind might bring to you the ancient whispers of long gone solons and visions of tomorrow. These buildings serve as our link with Ohio's grand past. But as grand as the buildings are, what transpires inside them is really what seals our democratic fate and secures our freedom as Ohio citizens. We can only hope that the architectural majesty will inspire humility in our representatives and senators; we can only hope that the power of the people will be determined within the bounds of the Statehouse's goal of representative democracy; we can only hope that our own political architecture consisting of fairness and equality will match the power of this architecture. On our walking tour, Lincoln will surely remind us, in the presence of such grandeur, that "no man is good enough to govern another man without that other's consent."

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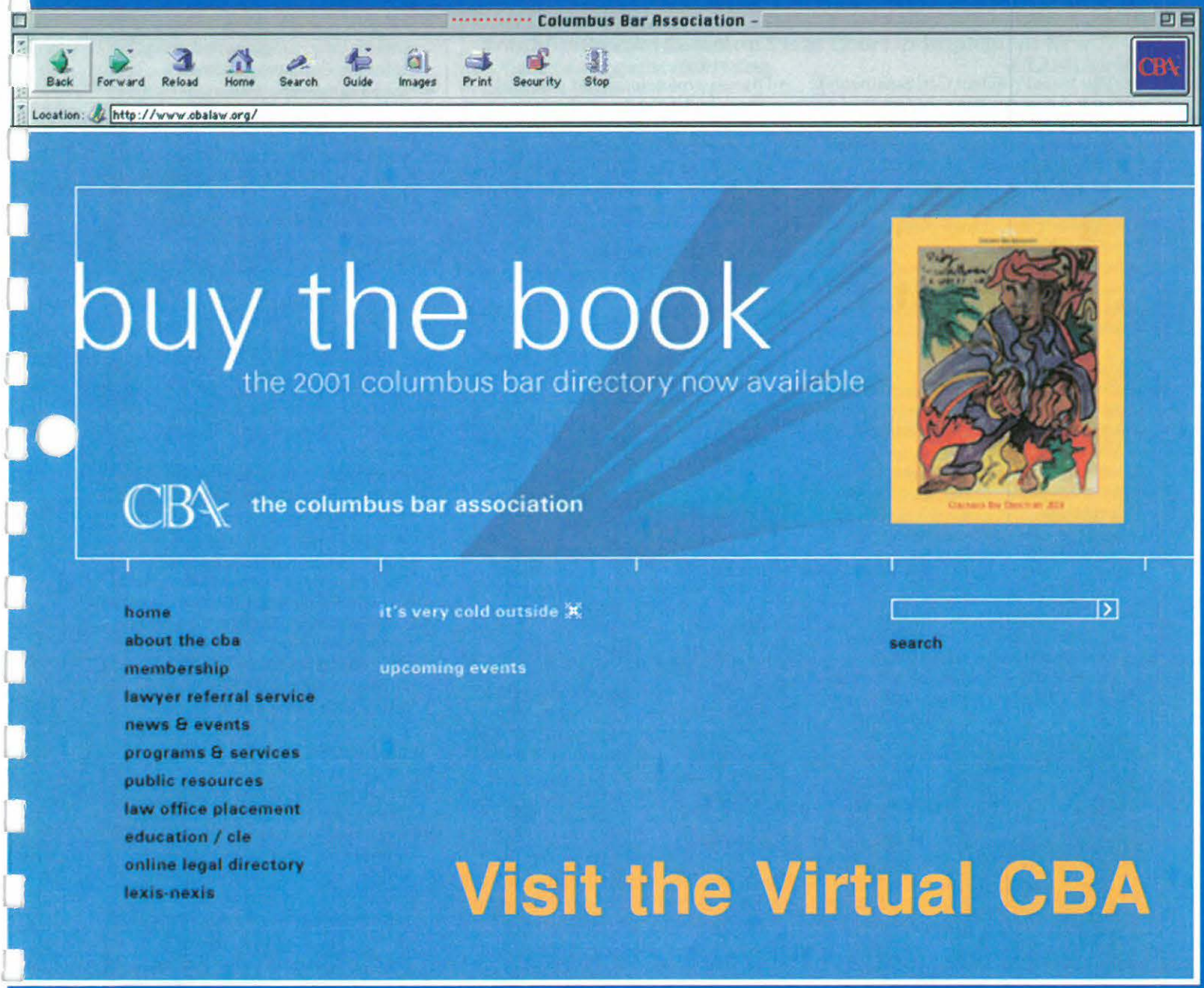
MARCH 2001



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A Supplement To *The Daily Reporter*

Chapter 13: Ground Zero for Genetic Paternity Testing

By Mark Kitrick

In the boy's bedroom the young woman, Lori, silently gazes down on the small bed where her youngster, Roger Zachery, is sleeping peacefully. His blond hair and natural good looks match her and her husband, Roger. With arms akimbo, Roger is also standing bedside, but is angrily repeating like an old LP whose needle keeps hitting the same groove, "He's mine, I don't care what anyone says or what any of the tests prove. He's my kid and that's that."

It was late 1980's. While love for her child exploded from her heart, Lori's guilt plagued her soul. It was a young marriage during which she had an extramarital affair with Allen Davis and had Zach. The union failed early and so she filed for divorce and custody after only two years. A major question revolved around who the boy's genetic father was. Allen's dark hair and eyes certainly did not match the boy's, but he might be the father. In the end, the domestic relation issues involving visitation, child support, and paternity were ingredients boiling in the legal stew.

Throughout the family law litigation, all the parties including Davis, a party defendant, pursuant to agreements and court orders, had multiple blood and genetic testing and it seemed each time, at least 98.5 percent positive, that the boyfriend, Allen, was the father. But Roger Hulett did not care. He had raised his child who looked remarkably like him, and from what he knew of the law, he was presumed to be the father. So he was not giving up.

Mark Kitrick

It was an unprecedented battle in Ohio, and the fighting began in Franklin County, first at trial, and then up to the Ohio Supreme Court. It was a legal conflict between the old common laws, which generated conflicting appellate decisions, and new scientific technology of genetic (including Human Leukocyte Antigen [HLA]) and blood tests. It was a clash between statutes and their construction. It was a major challenge to the courts' fundamental role to protect the child and not wanting to make the child illegitimate; if the child was born to the mother during the marriage and if the father had sex with the wife and was not out on the seven seas, then the husband was presumed to be the father. Finally, it was a procedural conflict between statutory presumptions and rebuttable presumptions.

The highly respected, prestigious firm of Sowald and Daneman (now Sowald Sowald & Clouse, the largest domestic relations firm in Ohio) began the early representation of Lori Hulett. When the courtroom battle and subsequent appeals transpired, Jon "Jack" M. Cope, one who handled primarily domestic relations, juvenile and business litigation; and Pete Millis, who did, *inter alia*, the oral argument at the Ohio Supreme Court, worked on the case for Lori. In the end, each attorney helped create new law. None have forgotten this case and its significance.

From *Hulett v. Hulett*, (1989), 45 Ohio St. 3d 288, a new era of parental parentage emerged. The new technological wave, which could help solve parentage problems, was accepted. If one could prove paternity by clear and convincing evidence – using technology – then the old presumptions of paternity could be successfully overcome. In the end, the decision emphasized our right that we were now better guaranteed a biological right to have a relationship with our child, regardless of a marriage contract, as noted by Jack Cope.

This case reminds us that we must not forget our fundamental responsibilities to our children. These duties, as Heather Sowald wisely reflects, are that parents must love their children, and be involved in their raising and caring. This commentary seems to reflect basic, if not obvious tenets, but unfortunately these ideas many times are quickly forgotten once the magic moment of birth ends and parents thereafter become consumed with life's everyday struggles. Certainly, no law should make us fail to follow these primary mandates for, in the end, don't we constantly remind ourselves that it is our children and hence all our futures that suffer the most?

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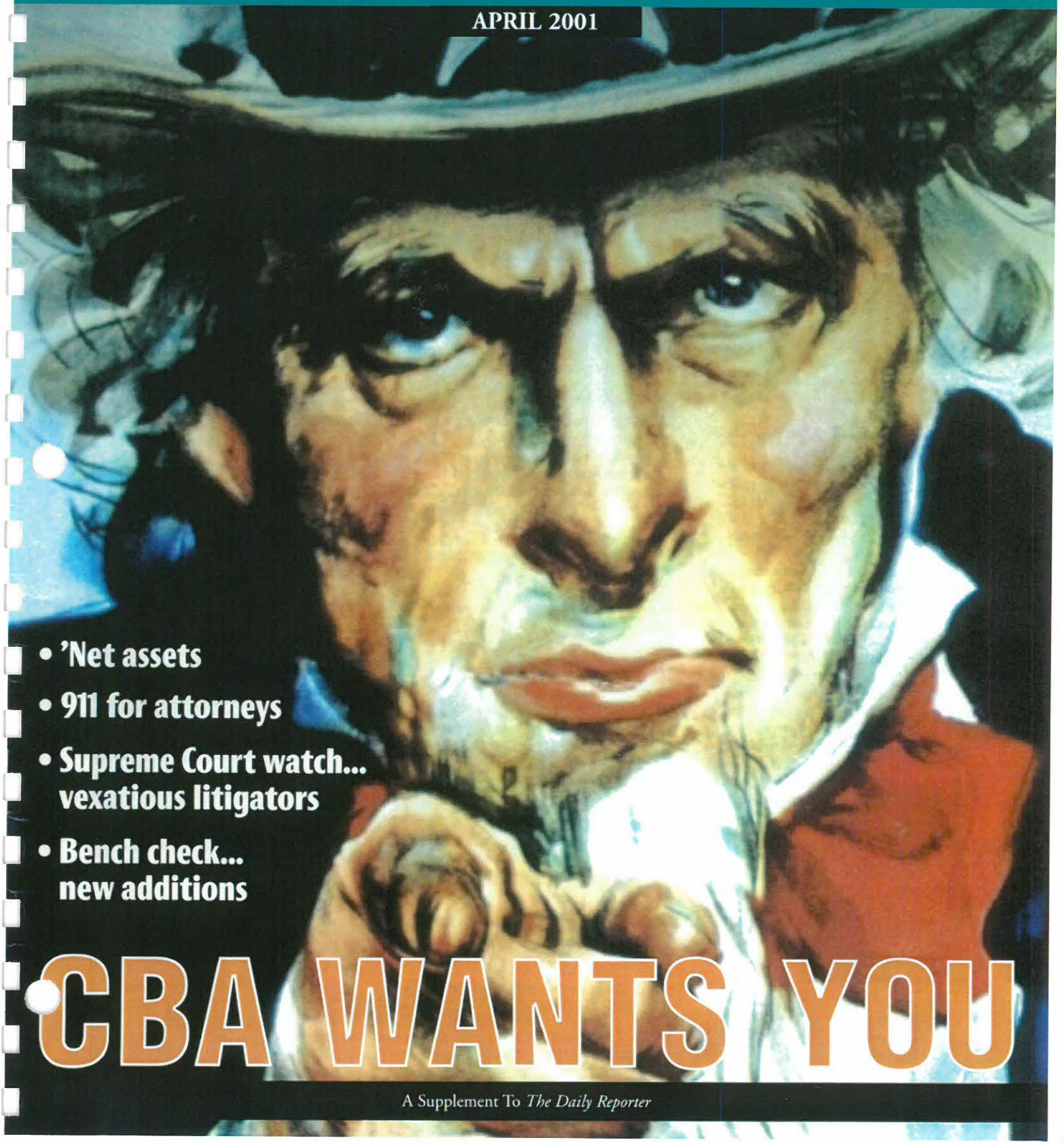
APRIL 2001



- 'Net assets
- 911 for attorneys
- Supreme Court watch... vexatious litigators
- Bench check... new additions

CBA WANTS YOU

A Supplement To *The Daily Reporter*

Chapter 14: We Know Him and He's Insane!

By Mark Kitrick

Judge Reed smashes down his gavel on the old worn oak. "Silence," his voice echoes throughout the chilly courtroom. The wood benches are hard where many of the dormant townspeople have taken up residence for at least a few days. Normally there is an unpleasant odor, but for the fresh December gust which is leaking through the window gaps searching for warmth. Reluctantly, the audience calms to a murmur at the murder trial of William Clark who allegedly killed fellow citizen, Cyrus Sells. Attorneys Swan and Andrews are fighting vigorously to save their client from the death sentence, but they are becoming increasingly demoralized as they watch their insanity defense disintegrate. Their strenuous objections are overruled once more; it has happened again, and again, and again, more than nine times, every time prosecutor Swayne calls another witness to the box.

So with the Court's imprimatur, the prosecutor, ignoring his opponents' obviously mounting frustration and with no noticeable pause in his timing, concludes the questioning of his witness, his friend, Franklin County Sheriff William Domigan.

Q. How long have you known the defendant?

A. I have had frequent conversations with him, as often as two to three times a week, for the last two years, and sometimes every day.

Q. From all you have seen and known of the defendant, what is your opinion as to whether he is, or has been insane, during the time that you have known him?

A. I have never considered the defen-dant, since I have known him, . and do not now, to be insane.

Mark Kitrick

There is more courtroom hullabaloo as this nail is tamped into Clark's casket. Despite the facts that none of the ten prosecution witnesses are professionals or physicians, and that the defense had Robert Thompson, a physician, state that the defendant was insane, the trial court rules that because the lay witnesses have personal knowledge of Clark, and can competently form opinions, their testimony is appropriate to rebut the insanity defense. After the Sheriff departs from the witness box, the jury finds Clark "guilty of murder in the first degree." Ultimately, the sentence of death is pronounced.

It was the December term, 1843 and the Supreme Court of Franklin County had to decide, for one of the bills of exceptions, whether it was proper for the trial court to allow this type of testimony from unprofessional witnesses. *William Clark v. The State of Ohio* (1843), 12 Ohio 483.

When analyzing this particular question, inter alia, the Court studied Shelford on Lunacy, and cited that "insanity is a disease of the mind, which assumes as many and various forms as there are shades of difference in the human character." To ascertain whether certain conduct by a defendant was feigned and artificial, the Court held that the common sense of mankind could be relied on and that, after all, the verdict is but the combined savant of nonprofessional men, formed upon that which is learned at trial.

The Court further opined that since both sides usually hire experts, there undoubtedly would be a conflict and it would be utterly unsafe for a jury or court to follow, or adopt, the conclusions of either side.

From that point the Court engages in an interesting philosophical discussion about the mind and what men can observe, how they do so, and what they have learned through experience, especially if personally familiar with the defendant and his conduct over time. The Court concludes that each person's knowledge of the mind is valid, notwithstanding a medical expert's opinion, which can be valuable and should not be discarded but is not necessarily superior to anyone else.

Finally, although the Court agreed there were conflicting opinions on the subject, there was a number of out-of-state and ecclesiastical authorities that admitted similar testimony in these and other cases, including those involving the soundness of mind of testators when executing wills. Ultimately, so long as the reasons, facts, and foundations of the opinions were enunciated, and the jury could weigh the evidence accordingly, nonprofessional witnesses could provide opinions to a jury. Thus, the Court held that there was no error in allowing this testimony and the application was refused. The result: Clark had a noose around his neck and when his body dropped, his second vertebrae snapped and he died.

This case of first impression is interesting in that it evidences our present desire to discover whether an insane defendant is merely engaging in an "ingenious counterfeit of the malady" has not significantly changed from 158 years ago, before the dawn of modern psychology. Fortunately, our knowledge base and understanding of the mind and its many facets, have evolved, in large part because of our relentless exploration of our psychological underpinnings, essentially all being accomplished by experts from numerous disciplines.

Our struggle to know more clearly why we act in certain ways continues. We have always yearned for answers and this search will last as long as our species. We should hope that as part of our search for truth that we can trust jurors to assist us.

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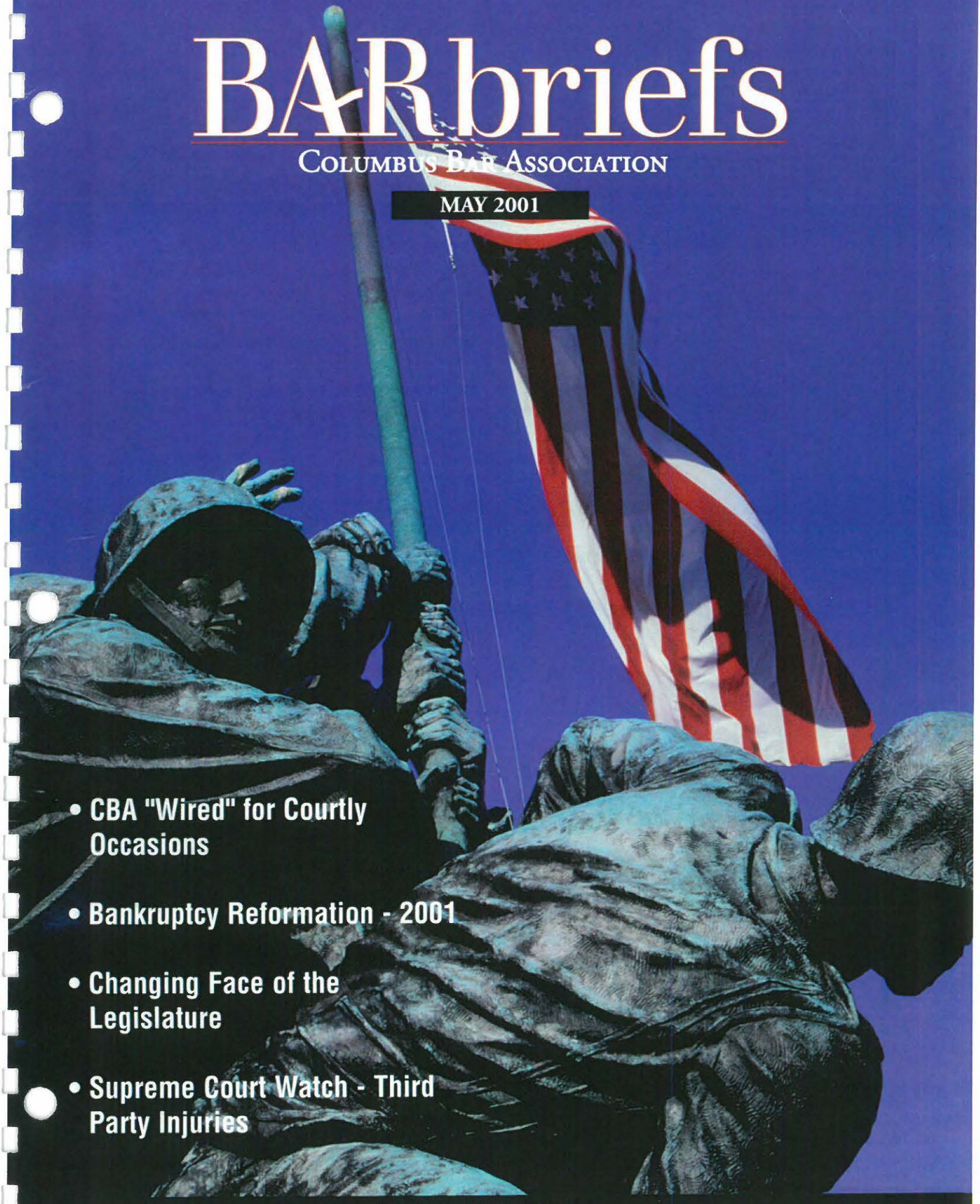

- CBA "Wired" for Courtly Occasions
- Bankruptcy Reformation - 2001
- Changing Face of the Legislature
- Supreme Court Watch - Third Party Injuries

A Supplement To *The Daily Reporter*

Chapter 15: The CBA's First 100 Years

By Mark Kitrick

Scene One: Dr. James Howard Snook grins inside as his secret love, Theora, hungrily munches on the sandwich he made for her that evening. Bite by bite she becomes more and more sick, but she does not succumb to his evil concoction. Eventually he has to go out into the windy, stormy night and pull a hammer from his car to finish his handiwork. He smashes her head in. She dies almost instantly. She probably feels little pain as she was slain while her last meal was injected with two different, powerful drugs designed to kill her as well.

This scenario happened around 10 p.m. on June 13, 1929. John J. Chester Jr. of Franklin County was prosecutor. The parents of Theora Hix, an Ohio State University student, came from Florida and hired Boyd Haddox as their counsel. The former 49-year-old veterinarian claimed he was insane. When the trial began, this case was the most sensational, shocking murder trial in our county.

Every day of the trial reporters wrote "hot off the press" stories. Notably, the case was so infamous and the testimony so intriguing that it was transcribed so it could be sold each night on Columbus's street corners. There was even a paperback written each day summarizing the facts. A sordid story evolved. Secret trysts. Forbidden sexual irregularities. A pact to keep it all secret. Theora's eventual repulsion of the doctor – all started from casual meeting at the doctor's office where Theora started working as a stenographer. The defense continually forged ahead on the insanity defense while showing how the beautiful young woman was proficient in pistol and rifle shooting. In the end, Snook was found guilty and executed.

Mark Kitrick

Scene Two: Judge Myron B. Gessaman hammered his gavel on his oak tabletop. Quiet, he warned the audience once again. Tiring of these outbursts of approvals or not of the attorneys' arguments, he could not stop some from fainting after hearing testimony, although they could not fall because his courtroom was so tightly jammed all 23 days of trial. One day the waiting line spiraled down three stairways and out onto Mound Street.

This was not just another murder trial. George Phillips was a 23-year-old, one-armed insurance agent who was released on bond after being indicted for second degree murder. It was alleged he brutally beat to death Ruth Alter while she was in her home in October of 1951. The successful and unprecedented legal maneuver of being released on bond was led by his defense counsel, Paul Herbert and James Britt. Another local first was Alter's body being exhumed so that Coroner Evan's could conduct an examination for missing hair samples. Four state witnesses received death threats so they were forced to succumb to round the clock security. Key doctor testimony was in serious dispute when his chemical reagent experiment failed in the courtroom. The local paper, *Ohio State Journal*, Ohio's *Good Morning Newspaper* at 5 cents a day, covered every day as if it were a highly rated *Survivor* show. Eventually, the eight women, four men jury, many of whom talked with the press afterwards providing their names and addresses, found that there was "too much doubt" and a lack of evidence. They returned a "not guilty" verdict after six hours of deliberation.

When 54 men formed the CBA on April 20, 1869, people were trying to break the tobacco and benzine habits, cure the enormous water pollution problem, break labor strikes, and worry about how shopping areas circling Columbus were extracting sales and merchandise from downtown stores. Upon reflection, one might question how much changes over time. Certainly famous trials, like the ones cited herein, occur no matter what era we study (perhaps because certain human behavior and deviancy transcend time). Fortunately, though, meaningful events do prove that our societal consciousness evolves, a handful of which between the 40's and 60's are noteworthy and deserve our reflection:

- 1947 – The Lawyer's Referral Service was formed to aid persons with legal needs.
- 1954 – Inmates of the Ohio State Prison contributed to the CBA office a solid oak conference table which they made as a thank you for the free legal services donated by CBA members over the years.
- 1954 – The Legal Aid Society was formed to provide free legal service to indigent citizens of Columbus.
- 1955 – A CBA Special Committee for Criminal Defenses studied the treatment of juvenile offenders to see if it could be accomplished in a more effective and remedial manner.
- 1956 – The CBA passes a resolution that "when and if a situation arises in which a person accused of subversive activities has exhausted his efforts to secure qualified local counsel of his choice, then the Civil Liberties Committee of CBA will request a counsel for the accused. When a list of five names has been compiled, the accused may choose which of the counsel he desires to represent him. Thereafter, the attorney selected will be authorized to say that he is serving at the request of the CBA.
- 1959 – The Women's Auxiliary formed.
- 1962 – The CBA, believing that an invasion of citizens' rights was occurring, conducted its own investigation of police brutality.

From a historical perspective, our insatiable appetite to observe others' tragedies seems to be an integral aspect of our nature. Yet, at the same time, we continually prove that we are not passive voyeurs; rather our observations of what transpires around us allow us to readily perceive and appreciate our collective shortcomings, so that we are not condemned to repeat our less auspicious history. This enables us to objectively better ourselves and our society, as evidenced by the great deeds accomplished by the CBA and its members.

Chapter 16: Challenging the Funding between State and Church

Submitted by **Mark Kitrick**
July, 2001
For ***Legal History*** Column

Little Frances, with her long auburn hair cascading down her blue plaid uniform that is adorned with the school seal, jumped for joy when she heard they were going on a school field trip. Her friends buzzed with excitement too. It was fun not to have to go to class, and instead take the yellow bus, sing songs and go to museums or churches or wherever Sister Mary Peters wanted. It also meant no homework, usually. Sometimes they would even get fancy lunches. Frances did not like to admit it, but she would learn all kinds of stuff that was not in the boring textbooks. How she wished her teachers would have more of these trips because they were so fat (cool).

Our nation's founders, like Jefferson and Madison, framers of our Bill of Rights, desired a high barrier between church and state. The ideas of secularism (pertaining to worldly, non religious things) and sectarianism (the spirit or tendencies of particular sects, esp. in religion) were highly debated. This crucial concept of division is set forth in our First Amendment which contains the Establishment Clause; it in turn is applicable to the States vis-a-vis the 14th Amendment. The idea is simple in principle and one with which few disagree: we do not want the state paying to instill or propagate religious values.

Practical application of this fundamental principle, though, can be confusing and complex. First, separation does not mean that people should not have a sectarian education or that instilling religious values does not serve a good purpose. Or that fighting for separation means one is hostile to religion. Only that the Establishment Clause mandates that sectarian values not be indoctrinated with public funding. In other words, the First and Fourteenth Amendments are designed, *inter alia*, to stop a state from propagandizing religious values. A salient constitutional question arises when, for instance, a state is providing money to nonpublic schools: is it aiding religious purposes or values?

About twenty five years ago, one of our citizens wanted an answer to this question. Franklin County taxpayer Benson Wolman, even at that time a veteran plaintiff and renowned ACLU point man in numerous constitutional actions, brought a taxpayer suit and challenged the constitutionality of all but one aspect of the Ohio Revised Code that authorized various forms of aid to nonpublic schools. In broad brushstrokes, the statute authorized the State of Ohio to provide nonpublic school pupils with books, instructional materials and equipment, standardized testing and scoring, diagnostic services, therapeutic services and field trip transportation.

The sum involved was $88,800,000. The amount per pupil in nonpublic schools could not exceed that of the public school pupil. It was stipulated that of the 720 chartered nonpublic schools in Ohio, all but 29 were sectarian, the vast majority being Catholic elementary and secondary schools.

The case was decided by the United States Supreme Court in *Wolman v. Walter, et al.*, 433 U.S. 229 (1977), after the lower courts found the statute constitutional. To pass muster under the Establishment Clause, the Ohio statute had to hurdle three barricades: one, the legislative purpose had to be secular; two, its primary effect could neither advance nor inhibit religion; and three, it could not foster excessive government entanglement with religion.

The United States Supreme Court acknowledged that the wall of separation between church and state must be maintained but could sometimes become "blurred, indistinct and variable barrier depending on all circumstances of a relationship." The Court, through a plurality decision by Justice Brennen, noted that the State had a goal and legitimate interest in insuring that its youth receive an adequate secular education.

The case was tried on its face (statute) so there was no record except for stipulations. The suit was brought, according to Wolman, because this statute was the state's attempt to give public funds for sectarian purposes. There already was a Court movement to allow more and more forms of aid. With the ongoing struggle to fund the public school system, Wolman did not want see the siphoning off of more aid from the public schools, thereby creating a depletion of overall resources, causing a reduction in student performance. The statute would lead to serious erosion of the principle of separation. He was trying to protect our constitutional rights. Interestingly and unknown to most, during this time Wolman's own son was attending a nonpublic school.

It was a complex case, with the Court grappling with minutiae, with drifting concurrences. The Supreme Court held that most of the statute was constitutional. However, Wolman won partial victory when the Court found the State's purchasing of instructional materials and equipment for the students and field trip transportation to be unconstitutional. Why? In part, because there was an unacceptable risk that the teacher, who works for a sectarian institution, will foster a religious purpose with the use of the money— this was an inevitable byproduct of the funding plan. The teacher could not remain religiously neutral. Therefore, the state would have to supervise the nonpublic schoolteacher and this would create excessive entanglement, ultimately violating the third aspect of the Establishment test.

Wolman, who was Executive Director of the ACLU from 1969-1986 when he became an attorney who now practices constitutional law, civil rights, employment law, and white collar criminal defense, reflected on this particular case and noted that there was a very civil relationship among the parties and the lawyers. Yet upon further rumination Wolman lamented that the conservative tide was not

stemmed by this decision; that is, the long term effect of this *corrosive precedent*, borrowing a phrase from Justice Stevens, was that more funding has been falling into the sectarian sector.

Justice Stevens, concurring and dissenting in part, would agree with Wolman too. The Justice found that what should have been "a high and impregnable" wall between church and state was reduced to a "blurred, indistinct, and variable barrier." The result has been, as Clarence Darrow had noted, harm to "both the public and the religious that (this aid) would pretend to serve."

The concerns of depleting our children's educational assets are valid, as schools crumble around us, and funding issues are at critical mass. Whatever side one's values and predilections take them, most understand that these issues are as germane today as two hundred years ago, that our forefathers had profound prescience in desiring to protect us from political and religious tyranny. We are fortunate that our fellow citizens are willing to take legal stances that balance power and protect our First and Fourteenth Amendments.

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THE MONTHLY MAGAZINE OF THE COLUMBUS BAR ASSOCIATION

DECEMBER 2001/JANUARY 2002

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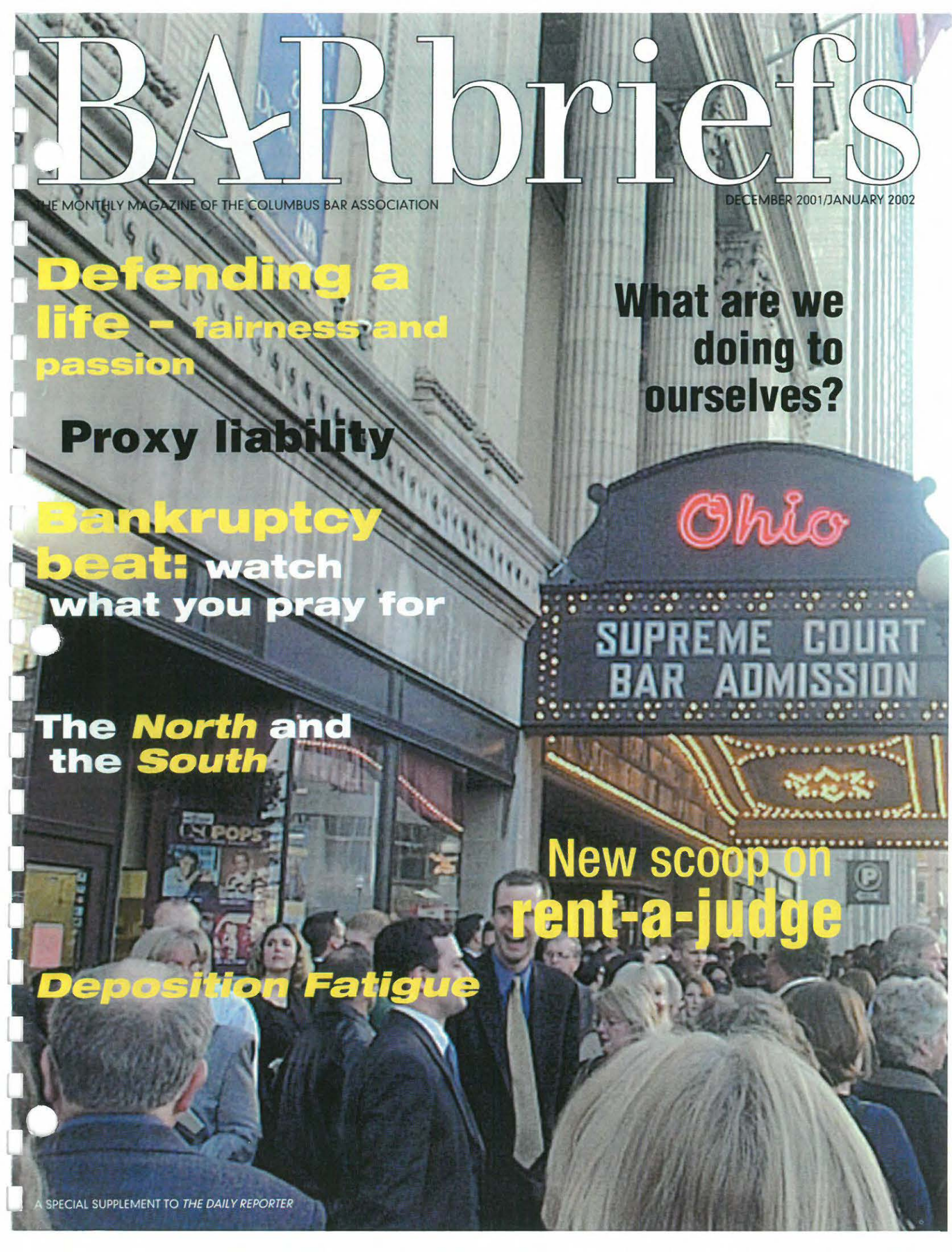
Proxy liability

Bankruptcy beat: watch what you pray for

The *North* and the *South*

New scoop on rent-a-judge

Deposition Fatigue



A SPECIAL SUPPLEMENT TO *THE DAILY REPORTER*

Defending A Life: Fairness and the Passion for Justice

Mark Kitrick
Kitrick And Lewis Co. LPA

It is around midnight. The enervated jury solemnly walks into the courtroom with their verdict. Beleaguered reporters tug out notebooks, believing their story is about to wrap. The defendant, Tommy Anderson, barely eighteen, a hardened by-product of the juvenile system, slowly stands. His two young though highly skilled trial lawyers stand with him as the Judge reads the verdict. "You are found guilty of first degree murder, the jury finds no mercy. You are sentenced to death."

The defendant is emotionless. His two court appointed attorneys, Otto Beatty, Jr. and Thomas M. Tyack, are completely disheartened. But their one immediate reaction is that the appeals court should overturn this verdict because their voir dire had been so severely restricted. As F. Paul Scott, one of Tyack's partners, drives them home in the early morning hours, they are profoundly sad; their combined legal savant and optimism in a future appeal provide no solace for another sleepless night. Tyack has now experienced first hand what his now late father, George E. Tyack, an eminent trial lawyer, meant when he said that "a little bit of you dies when you try one of these cases."

The facts revolving around Tommy Anderson's crime are not tendered in the Supreme Court's precedential decision of The State of Ohio v. Anderson (1972), 30 Ohio St. 2d 66. The defense attorney's version is that Tommy, when not in juvenile jail where he was a model citizen, was weak and nonassertive, thus easily led. He was often set up and used by older people to commit crimes. One night Anderson was given a gun by an older person and told to rob a Lawson's on Hudson. As he was doing so, Anderson sees a cruiser pull up in front of the store. He bolts out the back door but trips through a screen door and falls to his knees and elbows. In turn, his gun accidentally discharges. Anderson continues to run and is later apprehended, unaware that he had hit and tragically killed an off-duty, white auxiliary police officer who arrived at the scene.

At that time in the late 60's, the jury trial dealt with both the charge of guilt or innocence and the sentence of death or life in prison without parole. Because it involved the death penalty, the law required the appointment of two counsel. The guilty verdict had to be unanimous and the punishment was death, unless the jury unanimously recommended mercy.

The defense was simple: Tommy did not commit first degree murder, his actions were not purposeful. If anything, the defendant was guilty of manslaughter. Much of the evidence centered on whether or how the gun could go off accidentally. While the evidence went to the jury, the trial accumulated weighty press, probably because it was a white police officer killed by a young black man. Deliberations were long.

Although lacking in death penalty case experience, both lawyers had significant legal knowledge about their client's due process rights as had been defined by our land's highest court in Witherspoon v. Illinois (1968), 391 U.S. 510. Both felt, based upon the federal law, that during voir dire, the trial judge should have permitted a much more detailed inquiry about each jurors' state of mind regarding the death penalty. Instead, after overruling their strenuous objections, the Court only allowed each juror to answer with either "I can" or "I cannot" to a few extremely limiting and chilling questions by the Judge. This became their focus on appeal.

The defense lawyers' prime contention was that due process as set forth by federal law and the constitution mandated a right to a trial by a jury of unbiased and unprejudiced jurors. That requirement could only be met if the court provided sufficient scope and latitude to counsel during the voir dire examination. How can one know if someone is unbiased if counsel is prohibited from inquiring as to the real state of a juror's mind, especially when discussing the death sentence and its implications? Both sides should be able to ascertain whether someone is never willing to recommend mercy; or obversely, whether someone would never put someone to death, regardless of the facts and circumstances that emerge during the trial. If denied this latitude, one is deprived of a substantial right when trying to use peremptory and challenges for cause, which are designed to safeguard this constitutional right.

Acknowledging these constitutional rights, voir dire practices in general, the code and case law, the Ohio Supreme Court found that the trial court's restrictions on the questioning of the jurors violated Anderson's right to due process. Consequently, the Court reversed his death sentence and put him in prison for life. At least as of ten years ago, Anderson was still there and if still alive, is about fifty years old.

This was Tom and Otto's first death case. As a result they became good friends and have high mutual esteem and acclaim each other's trial skills. After over thirty years of practicing law, their practices are thriving. Otto handles primarily civil trials in personal injury and other matters while spending nineteen years in our legislature. About fifteen years ago he stopped doing criminal matters. Tom Tyack handles trial work, primarily in the criminal, plaintiff personal injury, and family law areas. Both have handled many high profile and celebrated cases since their early years and are highly distinguished in our community as well as in our state.

The case's ramifications are ongoing: their quest for justice in trial beginning at the voir dire stage, altered the process forever. For instance, their belief that more significant questioning must exist to guarantee a client due process has been judicially approved and is now accepted standard practice for such cases.

In retrospect, both attorneys declare that there is no greater, or more profound, or more moving trial experience than defending someone who is or may be sentenced to die. Perhaps what is most noteworthy while hearing their reflections is that these lawyers care deeply. One of their lessons is if we maintain a passion for fairness while desiring a process that will give a better probability of reaching justice, we are not compromising our client's rights. When we, as attorneys, strive for the system to fairly judge our clients, we become an inseparable link of due process.

Lifesaver Volunteer of the Month: Joëlle M. Khouzam

The mission of the Lawyers for Justice program is to help serve the unmet needs of indigent residents of Franklin County. December's Lifesaver award winner repeatedly exceeds expectations in assisting not only the LFJ client but the LFJ staff as well.

Marie-Joelle Khouzam, a partner with Carlile Patchen & Murphy, concentrates her practice in general litigation and insurance defense, and counseling and defending clients in employment issues. She also serves as the LFJ coordinator for her firm.

Joelle works in the pro bono arena with zeal and tenacity, not only placing cases within her firm but also taking on cases. In the last month she placed four cases with attorneys in her firm, retaining one herself and assisting a client in a payment plan negotiation.

Serving as a consultant to the LFJ coordinator on a number of cases, she is a priceless resource for the LFJ staff — quick to return phone calls and offer assistance.

Ms. Khouzam holds an undergraduate degree, cum laude, from Bowling Green State University and a law degree from the University of Toledo. As a Fulbright fellow, she studied at the Universitat Innsbruck in Australia and is fluent in French and German. She is past chair of the Community Service committees of the CBA and the Women Lawyers of Franklin County, and has especially enjoyed her work with the "Gardening for Good" program – an enhancement to the Christmas in April project.

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A SPECIAL SUPPLEMENT TO *THE DAILY REPORTER*

Chapter 18: Safeguards for the Detection of Truth

By Mark Kitrick

Souel is breathing uncomfortably. With the bundle of wires connecting him to a machine that is linked to a needle scribbling over long paper, who wouldn't be. But as he has allowed his body to be plugged in, he finishes answering the last four questions.

"Do you know for sure who murdered Ralph Steiman?" No.

"Did you murder Ralph Steinman?" No.

"Did you strike Ralph Steinman on the head with a blunt object?" No.

"Did you participate in the Ralph Steinman murder?" No.

No. No. No. No. With those answers Gene Souel gasps a sigh of relief. The polygraph test is over and hopefully his ordeal. As the administrator, Sergeant Wilcox, a highway patrol officer, analyses the registrations of Souel's pulse (cardiograph), blood pressure (sphygomograph), respiration (pneumograph), and electrodermal responses (galvanonmeter), Souel leaves the small room thinking he would be OK.

It was not until immediately before his trial in May 1976 that Souel changed his mind, withdrawing his previously-given consent to allow the polygraph results to go into the trial. The chip he was gambling was his life, having been indicted with aggravated murder, with a death penalty specification, and the aggravated robbery of Ralph Steinman. Over his attorney's forceful objection and written motion to suppress his polygraph results, the trial judge permitted Wilcox to testify at trial that Souel was deceptive when answering the key questions.

Even after Souel's counsel, Myron Shwartz, his well-respected, court appointed criminal defense lawyer, grilled the examiner on his qualifications, training, conditions and error issues, the court allowed the testimony to go to the jury. The judge did instruct the jury, though, that the examiner's opinion was not be considered conclusive; rather it should be weighed with all other testimony, which included Souel's vehement denial of guilt. However, on cross, he admitted to providing the police three separate stories at three different interviews, but only because he was elaborating on information the police had suggested to him in the first place.

The jury found Souel guilty of involuntary manslaughter and robbery and he was sentenced to 7-25 years on the manslaughter conviction and 5-15 years on the robbery, both terms running consecutively.

Souel's appeal was heard by the Ohio Supreme Court in The State of Ohio v. Souel (1978), 53 Ohio St. 2d 123, as one of first impression. The issue was, could a polygraph examination result be admissible when the defendant first consents by written stipulation, but then withdraws consent after the results are known but before introduced at trial?

To answer that question, first the Court confronted the polygraph's technological advance, which included reviewing the hypothesis behind the device's validity. Regarding the theory, one must concur with the science behind the belief that if one lies, a conscious conflict in the mind occurs. This in turn manifests itself in involuntary fluctuations of the autonomic nervous system. In short shrift, the Court agreed with this principal.

As for the polygraph's technological validity, the Court surveyed various jurisdictions and unearthed three views regarding admissibility: one was that the test results were always inadmissible, regardless of a proper stipulation. Two, that once one stipulates to admissibility, one is estopped from fighting admissibility because the results might be or are unfavorable. Three, which the Court eventually adopted, was that the results can be admitted if there is a valid stipulation and certain procedural safeguards are followed, monikered the "qualified approach."

This qualified approach as set forth by the Arizona Supreme Court in State v. Valdez (1962), 91 Ariz. 274, was found to be persuasive and thus adopted by our Court. [At least seven other states had adopted this approach by that time.] The Court recognized that the expertise of psychiatrists, psychologists, medical doctors—experts who educate us about our minds and bodies— can assist a jury. Why treat a polygraph examiner differently? If the device had "developed to a state in which its results are probative enough to warrant admissibility upon stipulation," as was the case in 1976, then it was admissible so long as the trial court was the gatekeeper of testimony. This means allowing cross examination of the examiner and informing the jury that the testimony and results are to be given whatever corroborative weight they desire.

Noting that these foundational hurdles had been cleared in Souel's case, and that there was substantial evidence supporting the convictions including three witness testimonies, the Court upheld the conviction.

Epilogue

Souel is sitting in his dim, smelly cell, reading, when he gets a visit from his lawyer. It is around 1979. He is hearing words from his lawyer, but he cannot fully comprehend their significance. His lawyer is telling him an incredible yet true tale: the three witnesses who testified in trial against Souel had all lied. In fact,

they had failed their polygraphs and then there was a cover up. Apparently the detective in charge of the case had threatened them with prison if they did not lie, he paid them money, and with his instructions, they lied so Souel could be convicted. Once the prosecutor uncovered these horrible truths and learned that this detective had engaged in this and other malfeasance, defense counsel was notified.

Rather than suffer through another trial, Souel decided to make a plea for time served. From his release until his death a few years ago when he was in his seventies, his wife would cheerfully and appreciatively call Shwartz every year to wish him a Merry Christmas and a Happy New Year.

This seasoned attorney still has his notes on this incredulous, made-for-television story. Upon reflection Shwartz, a 35-year criminal defense veteran, believes his client was innocent. He knows from experience that polygraphs get many people to confess. He discovered first hand that after his cross examination of the polygraph examiner, the state highway patrol would never do another polygraph at his request. This case contained multiple lessons for all of us.

In the end the Ohio Supreme Court implicitly recognized that the polygraph tool may be helpful in trial, but it is the judge and jury and their combined savant, intuition and knowledge that further filter evidence for the jewels of truth. We must never forget that lesson. If our legal system is to survive, we should never completely rely upon or be dependent on machines. As Joseph Campbell wisely commented, "technology is not going to save us. Our computers, our tools, our machines are not enough. We have to rely on our intuition, our true being." Sometimes, tragically, none of these survival safeguards are enough.

Redefining Success – a CLE elective?

By Kari Bowie Hertel

There is no class in law school that outlines the basic rules of super-parenthood necessary to simultaneously be a good lawyer and a good parent. I know many lawyers never become parents and even more parents are not and do not become lawyers, so maybe this is an elective most students would skip and quite honestly, I might have skipped it since, at the time, I thought that children and I would never exist in the same universe. However, now that I'm there, perhaps a good CLE should be offered on this subject by learned lawyers of both sexes who are veterans of juggling their legal careers and parenthood. I think this CLE should be given in a series of several stages of parenthood, not unlike the CLE that is offered on the stages of litigation by our beloved Columbus Bar. I'd even pay the non-member fee to attend.

As the mother of a little girl who recently reached the grand old age of one, I am jubilant that I (and my wonderful husband) have survived the first year of parenthood. Our little girl had what seemed like endless ear infections which did not clear up until her tenth month of life. Mommy and daddy spent many sleepless nights and bleary work days attempting to keep our jobs (let alone feel as if we excelled at them). We, who had been used to feeling achievement at work, were forced to change how we viewed success. Parenthood did give me a better sense of perspective which I feel contributed positively to me as an attorney. However, many times, success at work was simply finishing a project, which, prior to my new parenthood status, might have taken less time. My feelings of accomplishment also took on new forms, such as the victorious sensation of coaxing a crying and unwilling baby back to sleep at 2 a.m. or the soothing mood evoked when the baby is asleep on one of us as we lounge in the living room on a Saturday watching the football games we used to actually attend.

As we move into the toddler years, I'm sure my methods of measuring success and achievement will continue to evolve. I am told by those more experienced than I that the ride has only begun. My grandmother has told me that my daughter is an "active child." While I don't think that is necessarily a negative, I do believe my husband and I will be made to cultivate our senses of humor and mold our definitions of success both at work and at home.

While controversy remains – can you simultaneously be effective at work and as parents? – the fact of the matter is, regardless of what society thinks, there are millions of folks doing their very best to excel in both roles. With its strong preference for long hours and required weekend work, the legal profession has shown tacit disapproval of the "family" lifestyle. Admittedly, there are alternative career routes for those attorneys wishing more family and personal time. While many of those alternative routes are often not as financially rewarding, success, as I've described above, can be defined in infinite ways. Unfortunately, too often the legal profession appears to have extremely limited definitions of a successful attorney.

I am not advocating that everyone in our profession procreate, and in fact, such advocation would probably not sit well with the general public. I just don't think our profession need be so averse to family lifestyle. Our profession has much to gain by attracting members who choose to have families. As lawyers, we come into contact with all types of people in all walks of life, and we need to increase our appreciation of lifestyles outside of that historically and generally approved by the legal profession. Further, we need to expand our definition of success to include accomplishments which are not always measured by long hours of legal research or hefty compensation. Perhaps I choose to be an optimist, but it is thrilling to think that those of us in the Columbus Bar could be on the cutting edge in terms of our definition of success.

When is that CLE offered?

Kari Bowie Hertel
Auditor's Office,
State of Ohio

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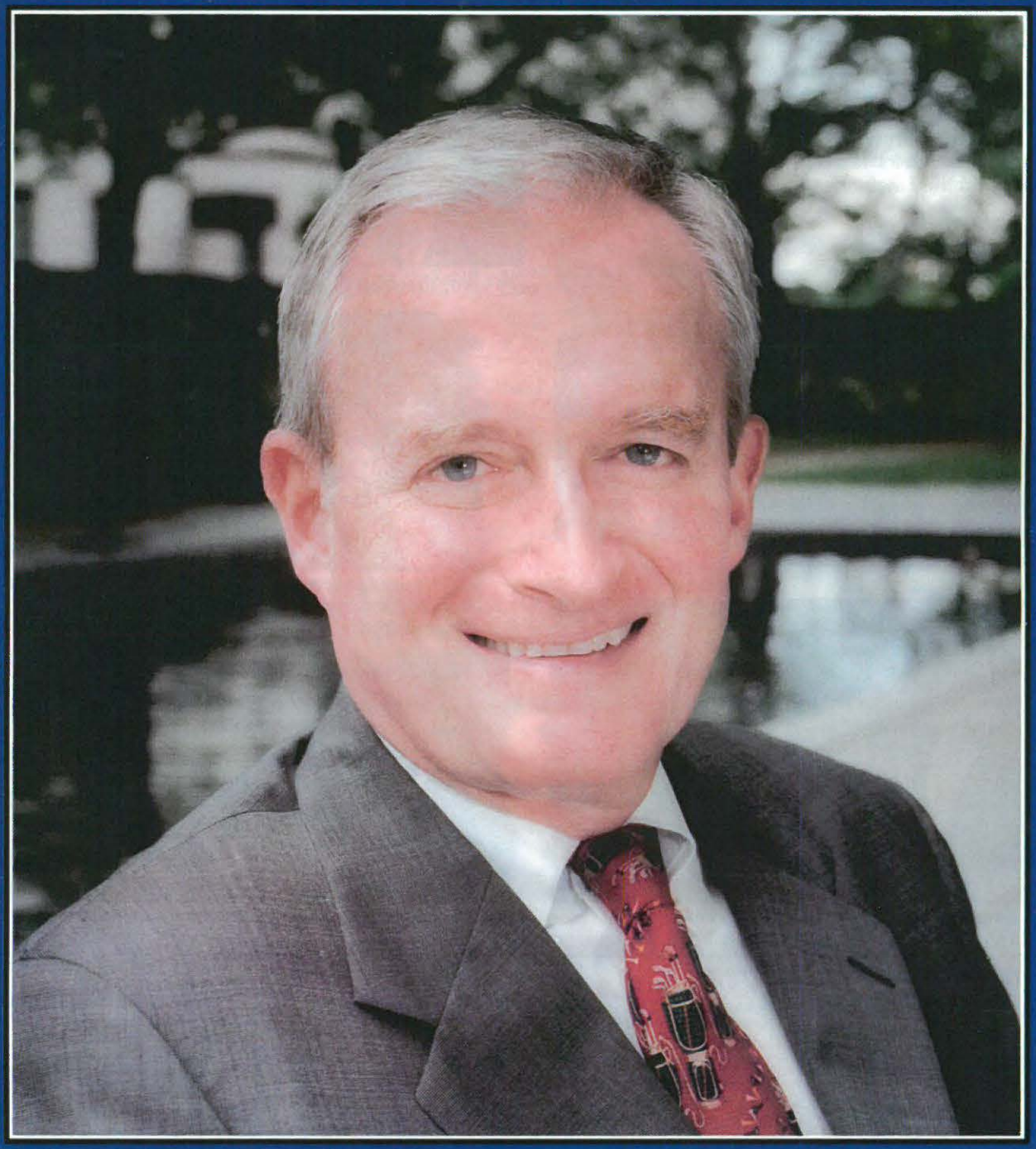

David C. Patterson

President 2002-2003

A SUPPLEMENT TO THE DAILY REPORTER

CHAPTER 19: CHAMPIONING OHIO'S ONLY ENVIRONMENTAL COURT

By Mark Kitrick

This judge is different. No robe, no gavel, no traditional formality. Administering justice—not from his high bench—but from a plain table in the middle of his courtroom. The judge, in a resolute voice, summons four or five folks from the throng to sit down at his table. He purposefully maintains eye-to-eye contact to ensure plain speak. It is also immediately apparent that his friendly but firm approach is judicious as he embarks on the morning arraignments.

The claims that the judge hears the first hour can be as diverse as: cruelty to animals, dog bites, landlord problems, an unsafe tenement, a neighbor's drainage on another's yard, foreclosures and zoning violations, sewer and air pollution, a sanitation crisis prosecuted by the City. Later Judge Pfeiffer (pronounced with an "F") will adjudicate motions for injunctive relief, landlord-tenant concerns, public nuisance citations, foreclosures and aids in execution of Judgment, and numerous other health, safety and environmental proceedings.

We have just walked into the Municipal Court, Courtroom 15 C. This is the Environmental Court. It is the only such court in Ohio. It was statutorily created as a division of our municipal court system. Its unique yet expansive jurisdiction is almost unknown; it is underutilized, and under appreciated by most Franklin County lawyers.

For years Representative Stinziano lobbied for a special environmental court to cure urban blight. Through his efforts in 1991 our solons created it by passing RC 1901.131, et seq. Although there are two similar "housing" courts, one in Cleveland and the other in Toledo which have limited powers, our environmental court is vastly different in many ways: it has unlimited monetary jurisdiction (as of 1997), it can hear felony cases, it can handle fire, safety, air and ground and water pollution, and health and sanitation issues. Citizens, prosecutors, Franklin County district Board of Health, townships, Department of Animal Control, the Capitol Area Humane Society, all routinely sit before the judge seeking justice on such matters.

In 1991 Richard C. Pfeiffer, Jr., a partner at Bricker & Eckler and also a state senator since 1983, envisioned the newly created court as a powerful tool for community communication and preservation. He had long term interests in affordable housing and the environment; for instance, he was the author of Ohio's 1985 Clean Coal Amendment. Clearly, his predilections matched the court's purview and so he ran for this elected position. After a successful campaign, Richard Pfeiffer, Jr., a decorated Viet Nam Army veteran, was sworn in as the Environmental Court's first judge and took the bench in January 1992. For the last decade, his energetic personality and devotion have molded that court.

To best comprehend the issues, you may find the trim, 58-year-old judge routinely walking the city streets and talking to his constituency. His philosophy is simple: "How can I solve community problems or understand them if I do not see them first hand?" Buildings and the land are like living organisms which, if possible, must be preserved. To illustrate, the Milo School, a famous artist colony, was situated in what the City believed was a firetrap. The judge's solution was to save the Milo School by requiring permits and safety programs with the proper follow up. Artists continue creating to this day.

To further grasp the societal ramifications of his work, the judge's corridors and rooms are covered with maps displaying anything from the poorest areas in Columbus (visualize a north and south strip though Columbus) to where people vote with their money by moving to outer belt way suburbs like Delaware, Hilliard, Reynoldsburg, and Lancaster. The charts are bold summary exhibits of the consequences of distressed structures and neighborhoods.

Overall, however, by evaluating first hand our environmental conditions, surveying maps, and hearing the people, the judge has broad knowledge with which to try to solve problems. One formula that needs to be continually applied is to convince inner city investors that they can serve their self-interests while simultaneously benefiting others.

The environmental court is a microcosm of the world's conflicts. As a result critics who claim that this court engages in mere penny-ante dealings have failed to realize that the human condition starts at home, whether it be the failure to repair it, or a landlord renting an unsafe habitat, or a nearby resident generating certain nuisances, or a corporation polluting nearby water, air or land. These situations mushroom into community discord, which in turn typify larger sociological issues, such as urban blight and flight, and all told indifference to our neighbor and land. If we understand this truth better we can avoid conflict and restore vibrant commerce and community well being.

This court, under the judge's leadership, has instigated a Renaissance, and our city and county are profiting. We can partake in the judge's pioneering project if we view this court as a healthy, living organism spawning community spirit. This is a rare opportunity for a unique institution, a devoted and caring judge and concerned citizens working for change. With vision and understanding, we can construct and preserve coalitions to re-build our human infrastructure.

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A SUPPLEMENT TO THE DAILY REPORTER

THE MIRANDA MATRIX

Chapter 20

By Mark Kitrick

Scene I – April, 1980
Rick McCarty is driving and weaving on an Ohio highway. Trooper Williams pulls him over, suspicious. When asked to get out of his car, McCarty can barely stand or talk, and falls when given a field sobriety test. He eventually admits drinking two beers and smoking marijuana a short time before. At that point the Trooper arrests him, drives him to jail and does a blood test that detects no alcohol. McCarty admits he is "barely" under the influence. He also claims he has a bad back and a limp, and that causes him to fall. Because it is a misdemeanor, the Trooper never gives him Miranda warnings even after he was charged with operating a vehicle while under the influence of alcohol and/or drugs.

Scene 2 – March 31, 1980
Bill Meeks has been patiently waiting for the right case to come into his successful criminal defense firm. He had been thinking about Miranda and how various courts, including the Ohio Supreme Court in Pyle, had subsequently limited its reach, and adversely affected suspects' rights. He strongly agreed with the Pyle dissent, that it made no sense that someone charged with a misdemeanor, like a DUI, who would automatically go to jail for three days not be given Miranda rights simply because it was not a felony charge. Bill was prepared to take his stance through the state and federal system. So when McCarty shows up that morning, Bill's prehensile mind recognizes the opportunity to rectify the law.

Scene 3 – February 1984
"What's this brief about?" Alan Travis asks Mike Miller as he glances at the overstuffed file Mike just laid on his desk. "It's your case now, Alan. We need you to write the United States Supreme Court merit brief and then argue it."

Alan Travis, now Judge Travis of the Franklin County Court of Common Pleas, was Chief Counsel of the Appellate Division for the Prosecuting Attorney. A doyen in his field, even at that time having handled hundreds of appeals, he had significant work ahead as he had not been involved in the case until that moment. He opens the file to learn Berkemer, Sheriff of Franklin County, Ohio v. McCarty's procedural history which included a no contest plea and conviction, the Franklin County Court of Appeals affirming it, the Ohio Supreme Court's denial of review, and Meek's filing a federal habeas corpus relief action. He further discovers that the district court dismissed the action only to be reversed 2-1 on appeal.

The issues at the highest court were should Miranda warnings be given when there is a misdemeanor charge and do the warnings need to be given when someone is detained pursuant to a traffic stop? There was much confusion and conflict throughout the country regarding the application of the 1966 Miranda vs. Arizona decision, which involved a felony.

After fervently analyzing the law, Judge Travis felt strongly that the Supreme Court needed to clarify the concept of custodial interrogation. Arguing that the felony and misdemeanor distinction should determine when a Miranda warning be given, he thought, was the weaker stance. So when Judge Travis thrust his pen to paper knowing that the ruling would affect the future actions of every prosecutor and police officer in the country, he concentrated on the freedom of movement notion, arguing that custodial interrogation does not automatically begin once a police officer makes a stop, nor do the Miranda warnings need to be given prior to a custodial interrogation, as the 6th Circuit held. Significant deprivation had to occur first.

Mark Kitrick