Season's Greetings!
Contents

Columns:

4  PRESIDENT’S MESSAGE
   Side Bar on the Bench Bar
   By Merle Wilberding Esq. | Coolidge Wall Co., LPA

6  TRUSTEE’S MESSAGE
   The Subtle Impact of the DBA
   By Sean P. McCormick Esq. | Thompson Hine LLP

18  JUDGE’S DESK
   To Bail or Not to Bail
   By The Honorable Susan D. Solle | Montgomery County Common Pleas Court

Features:

8  BARRISTER OF THE MONTH
   Martin A. Foos Esq., Foos Lentz LLP
   By Morgan K. Napier Esq. | Faruki+ PLL

10  CORPORATE COUNSEL
   Subchapter V: A Better Solution for Small Businesses Facing Financial Distress
   By Patricia J. Friesinger Esq. | Coolidge Wall Co., LPA

14  UDSL Annual Holiday Gift Column
   By Daniel Rafferty, Research Assistant, JD Candidate May 2022, UDSL

Departments:

12  December 2021 DBA CLE

13  On Demand CLE Get your CLE on your time

20  Dayton Bar Foundation Consider your giving this holiday season

Also Inside:

20  LAW RELATED ORGANIZATIONS
   Dayton Bar Foundation pg 20
   Diversity & Inclusion Legal Roundtable pg 22
   Greater Dayton Volunteer Lawyer Project pg 23
   University of Dayton School of Law pg 21
   Ohio Lawyers Assistance Program (OLAP) pg 24

26  MEMBERS ON THE MOVE

26  CLASSIFIED ADS

26  ADVERTISER INDEX
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I
n this Side Bar column, I want to share my thoughts on our Bench Bar, “Justice on the Brink & the Rule of Law,” held at Sinclair Community College on November 5, 2021.

First, I want to thank everyone who attended. I thought we had a great turn out and it was great to see everyone face to face. It was reassuring to return to a more normal setting.

Second, I want to thank our Co-Chairs who worked tirelessly to create a program that was both relevant and interesting. Judge Gerald Parker was our key to connecting to the judges who joined us and who participated in our panels and group discussions. Magistrate Judge Carolyn Gentry identified and constructed a wonderful panel on “Housing Segregation in Dayton.” (I will take this moment to again congratulate Carolyn on her appointment to the Magistrate Judge position in the Southern District of Ohio.) Dan Gen
try did yeoman service as co-chair to attract, co-ordinate, and facilitate the planning and performance of the program. The co-chairs were the keys to the success of the program and I appreciate their efforts.

Third, I want to thank all of our presenters in both the plenary sessions and the break-out sessions. What I noticed was that attendance was generally uniform at each of the sessions, suggesting to me that we had a good mix of speakers and topics that reflected and attracted the spectrum of our bar membership. I also want to thank again our sponsors who enabled us to put on a great program.

Then there was our keynote speaker, Linda Greenhouse, speaking on “Justice on the Brink: The Death of Ruth Bader Ginsburg, the Rise of Amy Coney Barrett, and Twelve Months that Transformed the Supreme Court.” She was correspondent for the New York Times for more than thirty years and even after retiring continues to publish a weekly Op Ed for the Times. She received a Pulitzer Prize for her beat reporting in 1998; she has published a number of great books about the Supreme Court, including one just released by the same name as our Bench Bar program.

So, we were thrilled when she accepted our invitation to come to Dayton. Linda told me that this trip to Dayton was going to be her only trip this year, compared to her schedule prior to the pandemic when she was traveling eighty days per year. That confirmed our belief that we were getting a special opportunity. And we did.

The official release date for her book, Justice on the Brink, was set for November 10, but Linda interceded with Random House to permit DBA members to buy advance copies because this was a private event. Thanks also to Dave Ireton from Books and Company who brought a supply of those books to the Bench Bar and enabled a number of us to buy them and have them signed by Linda.

Throughout her visit, Linda was open in her discussions and her opinions. On Thursday evening Susan and I had dinner with Linda, Andy Strauss, Jennifer Otchy, Gerald Parker, and Carolyn and Dan Gentry. Linda was very engaging on a spectrum of topics ranging from how to cook a Cornish Game Hen and to her plans to travel with her husband on what might be described as a reenactment of an historic cruise along the original Erie Canal. At the end of the evening, her only request was that we come up with a copy of Friday’s print edition of the New York Times. (Luckily, I do get the weekend editions delivered, so I could deliver.)

While her keynote address was scheduled for Friday at 9:00 am she readily agreed to come at 8:15. This enabled us to introduce her to many of the judges and special guests, including Governor Bob Taft about whose great-grandfather William Howard Taft,
Linda Greenhouse had admired in her *Just a Journalist* book as the best administrative Chief Justice of the United States Supreme Court.

She also had a chance to meet Dave Greer, the dean of our Dayton Bar. They immediately connected, perhaps because Dave is a Yale-Yale alum and she is the Knight Distinguished Journalist-in-Residence at Yale. When I pointed out to Linda that Dave had argued two cases in the U. S. Supreme Court, Dave identified those as the Dayton School Desegregation cases, and Linda immediately gave her own thoughts on those cases and the makeup of the Supreme Court at that time.

Following her keynote address she took a number of questions and I want to thank our audience, for I thought all of those questions were great ones. Perhaps the answer I enjoyed the most was her response to the question of how long it took to write *Justice on the Brink*. She answered by saying that was writing in real time as the cases and decisions were being released by the court, so in that context, she said that she wrote it in “twelve months and forty years.” I thought that was a great answer because it reflected so well what writers do --- they write in real time but the thoughts behind their written words reflect their past experiences. For Linda, her current book incorporates her career experiences with the Supreme Court.

In many ways this Bench Bar was a joint effort of the Dayton Bar Association and the University of Dayton, School of Law. Dean Andy Strauss chaired the afternoon plenary session on Housing Segregation in Dayton that was historic and instructive, and really identified the causes and effects of the enduring Red Line. I thought this presentation opened up our eyes and hearts to the continuing challenges in front of us.

The Law School played a major part in attracting Linda to come to Dayton and speak at the Bench Bar Conference because it had selected her as the first recipient of the Susan Newhart Elliott Excellence in Legal Scholarship Award. Linda also committed to having her comments published in the University of Dayton Law Review. Melissa Mazer as Editor-in-Chief and Ricky Murray as Managing Editor participated in the award ceremony. This was a good opportunity to showcase the ongoing cooperation and mutual support of the DBA and the Law School.

Thanks to DBA member Lance Gildner, who recently acquired the national franchise for Cantera Negra, we gave away a presentation bottle of its prize-winning Cantera Negra Añejo tequila as a “Last Call” door prize at the end of the conference. Tom Green held the winning ticket. Congratulations, Tom, and thanks again, Lance.

It doesn't take a Side Bar to recognize and appreciate that the Bench Bar Conference provided a healthy engagement of our lawyers with our judges. But I will use this Side Bar to thank our lawyers and judges for the contributions they make. Just when we may think that justice may be on the brink, we realize that we are all brothers and sisters under the law and working together to honor the Rule of Law.

*View the complete library of Bench Bar photos captured by Julie Noeth, wallingphotography.net on the DBA Facebook page!*
As we fight our way through to the other side of this pandemic, I am reminded of the drastic impact the last eighteen months have had on working families across America. Jobs have been lost, hours and wages cut, and many American parents and children have reported a deterioration in their mental health. One in three working families have struggled to find childcare, while 44% of households with children under the age of eighteen have reported significant financial trouble. The impact on working women has been especially drastic, with approximately 9.8 million working mothers reporting suffering from workplace burnout, and 56% of working mothers indicating that if money was not an issue they would quit their jobs due to the stress of working and parenting during the pandemic. These are sobering statistics and just the tip of the iceberg when considering the sociological, psychological, and economic impact of the pandemic.

I remember when the pandemic first hit, and my wife and I were attempting, quite unsuccessfully, to watch three children under the age of 5 while working from home. How many of us with little ones had multiple Zoom calls interrupted by a toddler looking for a snack? We kept very odd hours during those first few months – one of us would watch the kids while the other worked, and then swap positions like the ultimate lawyer/daycare tag team. Unlike many, our family was extremely fortunate to have a lot of local family support to help get us through. Without that support system, I am not certain we would have pulled it off. Bravo to those of you that preserved without any backup support. You are superheroes in my book.

While I can empathize with the struggles working families endured during the pandemic, all of us felt its impact in one way or shape or form. Indeed, the difficulties many of us faced were exacerbated by the dreadful isolation. Not only were we trying to push through a worldwide health crisis, but, for the most part, we had to go it alone, only communicating with most of our family and friends via cellphone or Zoom. We are inherently social creatures, and although Zoom allowed us to continue to work and communicate during the pandemic, it is simply no substitute for actual, face-to-face, genuine human interaction.

Fast forward to last Friday, when many of us in the local bar saw each other for the first time in a long time at the annual Bench Bar Conference. While the programming, including the indomitable Linda Greenhouse, was superb – as always – for me, the best part was seeing so many friends and colleagues in-person and catching-up.

ENDNOTES:

2. See https://www.opb.org/article/2021/10/19/1-in-3-working-families-is-struggling-to-find-the-child-care-they-desperately-need/.
3. See https://www.msn.com/en-us/lifestyle/family/parents-have-always-been-stressed-e2-80-94-and-then-the-pandemic-hit-how-moms-are-handling-it-all/ar-BB1eZv8c.
Isn’t it funny how a simple, “How are you?” from a friend and colleague can make a world of difference to you? These seemingly innocuous one-on-one interactions have the power to completely flip our state of mind and give us a newfound optimism. I walked away from last Friday’s conference with a certain unexplainable buoyancy and renewed appreciation for our Bar Association and all of the wonderful people who make it such an important part of our community. It was therapeutic to spend time with one another and discover that, for the most part, we are doing okay. I cannot think of a more important takeaway than that.

So, thank you fellow members of the DBA for your friendship, professionalism and compassion. Our family sends its best wishes to all of you for a safe and happy holiday season. Give your loved ones a big hug and treasure the time spent amongst friends and family. If we’ve learned anything through this time, it’s that we cannot take such moments for granted.

I look forward to our future meetings and conversations. Until then, I hope this message finds you, and finds you well.

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This month’s Barrister of the Month, Marty Foos embodies the Lou Holtz quote, “Do right. Do your best. Treat others as you want to be treated.” Marty, a Tiffin, Ohio native, is a two-time graduate from the University of Notre Dame as he earned both his undergraduate and juris doctorate degrees from there. While he does not recall meeting her, Marty shared professors and a year at Notre Dame with Justice Amy Coney Barrett.

After law school, Marty worked for Judge Theresa Lazar Springmann of the Northern District of Indiana. His time clerking for Judge Springmann helped Marty hone in on his motivation for entering into the practice of law as she fostered an environment for her young clerks to set aside the challenges and anxiety that come with being a young lawyer. Judge Springmann focused on teaching how they could help others and do their best. Helping others, Marty learned, did not always come in the form of advocating for the sake of advocating; there is nobility in defending against those who abuse the judicial system.

These lessons followed Marty to Dayton where he worked for Faruki PLL for several years before joining Gary Gottschlich and Buzz Portune at Gottschlich & Portune, LLP, which is now known as Foos & Lentz. While Marty’s practice areas are vast, he enjoys his role as an advisor most and considers his experience to be his specialty area of the law. He believes that the role of an attorney is first and foremost to serve as an advisor. Anyone can find an answer on Google; Marty serves his clients by taking a step back from the situation and providing his best advice – the advice that he would give to his mom. According to Marty, the role of an advisor is not to tell others what to do, but to work together to find a smarter path through the problem. These skills helped him in his role as a volunteer for St. Vincent De Paul, where he taught the basics of the legal system. He fondly remembers not only the conversations that were had with the men there, but working alongside them to clear off cars in downtown Dayton after a heavy snowstorm.

Marty also enjoys mentoring younger attorneys, especially those who are interested in owning a small business. As a small business owner himself, he understands the challenges that such owners face and appreciates the support of his co-owner, Mary Lentz, through the transition of the firm from Gottschlich & Portune to Foos & Lentz. Through the transition (which took place in the midst of COVID-19), they successfully moved locations, changed the name of the firm, kept their clients, and did not have any pandemic related lay-offs. In Mary, he has found both a great friend and partner.

Marty credits many local attorneys with instilling in him the skills he needed to be a great lawyer. He credits Buzz Portune with teaching him how to be a great leader. Buzz continues to teach Marty to be a good partner and colleague. When faced with a challenging situation, Marty often asks himself “What would Buzz do” to find solutions to the issue; Buzz has been a great mentor to him.

In his free time, Marty enjoys spending time with his wife, Annie, at their home in St. Anne’s Hill in Dayton. Marty and Annie bought a Victorian home there because it looked nearly identical to a home that stood behind his great-grandfather in a photo from 1915. With the help of Marty’s father, they even added a porch to their home to complete the likeness. Annie, the owner of St. Anne’s Cheese Co., sources and educates people about cheese at different pop-up shops and events in the community. Marty particularly enjoyed a trip that she organized to an Amish farm where he learned to milk a cow from a young girl who was astonished that adults did not know how to milk a cow. Marty also enjoys singing in the choir for the German club near his home and for his church, St. Mary’s Catholic Church, and spending time with his brother, who was named the head coach of Capital University’s football team in December. Marty is the past President of the Carl B. Kessler Inn of Court; past Chair of the Litigation Section of the Ohio State Bar Association; and the past President of the Notre Dame Club of Dayton.

By Morgan K. Napier Esq.
Faruki+ PLL
mnapier@ficlaw.com
Join us in celebrating the works of the Greater Dayton Volunteer Lawyers Project!

DBA Holiday Luncheon

December 13, 2021 - Noon to 1:30 pm
Sinclair Conference Center
Covid-19 Safety Rules Apply
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Special Guest Speaker:
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Most business owners facing financial distress refuse to file for Chapter 11 bankruptcy after understanding the process and its risks. The Chapter 11 process is lengthy, burdensome, expensive, risky, and often overwhelms an already distressed business owner. A new form of bankruptcy has recently become available that significantly reduces the drawbacks of traditional Chapter 11 while providing qualified businesses with a meaningful opportunity to reorganize their debts.

The Chapter 11 process can be lengthy – its duration is controlled by the timing of plan filing, the deadline for filing can be extended up to 18 months, and the debtor is required to solicit votes in favor of the plan. The Chapter 11 process is expensive – the debtor in bankruptcy must pay for attorney's and trustee's fees, and if a committee of unsecured creditors is appointed, for the expenses of the committee, including attorneys’ fees. The Chapter 11 process is burdensome – the debtor must file monthly operating reports and must develop a plan that is workable for the debtor yet will garner enough votes to be approved. The Chapter 11 case is risky – the business owner may wind up in a bidding war to buy back his own interest in the company due to a doctrine called the absolute priority rule. With these serious drawbacks, it’s no surprise that most businesses facing financial distress do not undertake the Chapter 11 bankruptcy “cure.”

After extensive lobbying, the Small Business Reorganization Act of 2019 (“SBRA”) was passed and the Subchapter V, Chapter 11 option was born. SBRA went into effect on February 19, 2020 -- incredibly timely for the multitude of small businesses that would end up needing relief following the COVID-19 pandemic. SBRA adjusts the application of many provisions of Chapter 11 to small businesses and their owners, including single-owner businesses. To qualify for SBRA, among other requirements, a debtor must not have debts exceeding the $2,725,625 debt cap, which was temporarily increased to $7,500,000 by the CARES Act, and now through March 27, 2022. Debts counted towards the cap are noncontingent and liquidated debts not owed to the business owners, so many small businesses in the Dayton area are able to qualify.

The Subchapter V qualification under Chapter 11 lessens many of the Chapter 11 drawbacks for a business considering bankruptcy:

5. The common name for the Coronavirus Aid, Relief, and Economic Security Act.
6. The temporary increase in the debt cap was extended by the Covid-19 Bankruptcy Relief Extension Act of 2021, and efforts are underway to make it a permanent fixture in the Bankruptcy Code.
THE COST SAVINGS
Under Subchapter V, the debtor is not required to pay U.S. Trustee’s fees, which are due quarterly and are calculated based on a percentage of disbursements made in that quarter. For example, a business with $6 Million in annual revenue (and disbursements to match) would pay $12,000 per quarter to the U.S. Trustee’s office, a burdensome expense of Chapter 11. Because a committee of unsecured creditors is not appointed in a Subchapter V case unless the court orders, the debtor will likely not have those fees to pay. Subchapter V debtors will have to pay the fees of a Subchapter V Trustee, but such Trustee is usually beneficial to the debtor as its duty is to assist in developing a consensual plan.

THE DURATION IS SHORTENED
A Subchapter V plan must be submitted to the court within ninety days of the bankruptcy case filing. This is significantly shorter than the 300-day timing in a traditional Chapter 11 case. While deadlines for filing the plan may be extended in a typical Chapter 11 or other non-Subchapter V case, there are a lot fewer options for extension under Subchapter V. As such, Subchapter V cases have a much shorter duration than typical Chapter 11 cases.

THE BURDENS ARE REDUCED
The reduced duration of the case prior to confirmation of a plan reduces the burden on the debtor business. While Subchapter V still requires the debtor to prepare and file with the court the same extensive monthly operating reports until the plan has been confirmed, because of the shorter duration of a Subchapter V case, this obligation is less burdensome. The shorter duration of the Subchapter V case also reduces the amount of time that the debtor business is subject to additional oversight by the U.S. Trustee’s office and the Subchapter V Trustee, which reduces to an annual status report upon confirmation of the plan. Finally, a major burden which is avoided in a Subchapter V case is the formulating of a plan that can attain votes from creditors. While a typical Chapter 11 case requires that the debtor obtain at least one class of creditors to vote in favor of its plan, a court may approve a Subchapter V plan even without any creditor votes for the plan. A Subchapter V debtor may still receive some benefits if it is able to obtain creditor votes for its plan, but the inability to obtain votes will not preclude the Subchapter V debtor from obtaining relief.

CERTAIN RISKS TO THE OWNER OF THE BUSINESS ARE ELIMINATED
In a typical Chapter 11 case, if the debtor is not able to cause all classes of creditors to vote for the plan, the absolute priority rule must be met. The absolute priority rule requires that creditors and shareholders are paid off in order of their priority. Debts to a prioritized class must be paid in full before any benefit is available to the next class, and Owners of a bankrupt company are in the last priority position. As such, the absolute priority rule requires an owner to “buy back his ownership,” since permitting the owner to retain ownership of the business when all other creditors have not been paid in full would violate the absolute priority rule. Thus, while a traditional Chapter 11 bankruptcy includes the risk that the business owner may lose his ownership to a competitor or other investor, the absolute priority rule does not apply in Subchapter V cases.

The requirements of any Chapter 11 case, including a Subchapter V case, are extensive, but the less burdensome requirements of a Subchapter V case make it a much more meaningful form of debt relief available to small businesses and business owners.
December CLE 2021

1.0 Gen Hr | Noon - 1:00pm | Live Webinar
2021 Ohio Supreme Court Review: A Conversation with Chief Justice Maureen O’Connor
An overview and update on Supreme Court proceedings during the pandemic and discussion on how the court has improved operations using technology.

3.0 PC Hrs | 9:00am - 12:15pm | DBA Offices
The Ethical Lawyer: Professionalism Standards for Practicing Law Today
DBA Bar Counsel, John M. Ruffolo, Ruffolo Stone & Stone,
Tabitha Justice, Partner, Subashi Wildermuth & Justice; Mark Tuss; and Jeff Hazlett, Mediator/Arbitrator
An update on ethical issues attorneys face. The panel will discuss: Professionalism Ideals, cases and sanctions, and help attorneys distinguish what about the cases landed them in front of the Board and ethical guidance for practicing law today.

3.0 Gen Hrs | 9:00am - 12:15pm | Sinclair Conference Center
Judge Steven K. Dankof’s 2021 Criminal Law Update
A discussion of the year’s cases of note from the United States Supreme Court, the Ohio Supreme Court and various appellate courts throughout Ohio impacting day-to-day criminal law practice in Ohio. View the “Non-Exhaustive List of Cases/Topics to be Covered” at daybar.org.

3.0 Gen Hrs | 1:00pm - 4:15pm | DBA Offices
Common Pitfalls in Estate Planning Guardianships, Documents and Probate Court
Eli Sperry, Young & Alexander; Nancy Roberson, Roberson Law; Chief Magistrate Joe Gallagher; Magistrate Lisa Wiseman and The Honorable Judge David Brannon
Topics to be covered: Pitfalls when Administering Guardianships; Pitfalls when Drafting Estate Planning Documents; and Pitfalls and the Court

3.0 Gen Hrs | 9:00am - 12:15pm | Sinclair Conference Center, Room 116
Federal Court Update
Judge Michael J. Newman; Judge Walter H Rice; Judge Thomas M. Rose; James P. Fleisher, Bieser Greer and Landis, LLP; Tamara S. Sack, Attorney at Law; and Caroline Gentry, Porter Wright Morris & Arthur, LLP
Become a more effective litigator at the 2021 Federal Practice Update. United States District Court Judges will offer thoughts on federal practice and provide tips and tricks for successful federal litigation. Learn about Federal Court Issues and Developments, the effect of COVID-19 on Due Process and a Sixth Circuit Case Law Update.

1.0 PC and 1.0 Gen Hr | 11:00am - 1:00pm | Live Webinar
The Connection Between Legal Malpractice, Competence and Attorney-Well Being
Tracy L. Kepler, Risk Control Consulting Director, Global Specialty Lawyers Professional Liability; and Heidi Alexander, Director, Massachusetts SJC Standing Committee on Lawyer Well-Being
Lawyer well-being and the findings presented in the “Supreme Judicial Court Steering Committee on Lawyer Well-Being Report to the Justices”. Presenters will speak to some of the national work through the Institute for Well-Being in Law as well as current research on the topic.

1.0 NLT Client Fund Management Hr (credit pending) | Noon-1:00pm | Live Webinar
Lawyer Financials 101: Client Fund Management and IOLTA
Kiko Yee, General Counsel and COO, Ohio Access to Justice Foundation
Information about what an attorney should know about Client Fund Management. Relevant information on IOLTA, and general best practices ethics that lawyers should be aware of in practice.

1.0 PC Hr and 2.0 Gen Hrs | 9:00am - 12:15pm | DBA Offices
29th Annual Intellectual Property for General & Corporate Practitioners
Matthew R. Jenkins, Jacox Meckstroth & Jenkins; and Ted Liensch, Thompson Hine
An annual DBA CLE favorite celebrating its 29th year! Topics covered include: Trademarks and Domain Names; Trade Secrets; Patents; Copyrights; and IP from a Litigators Point of View.

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Another year has come and gone, which means it’s time for another round of “Things You Should Buy for the Holidays,” courtesy of your friendly neighborhood law student research assistant. Here’s another perfectly curated list of 2021-appropriate gifts for the legal community. May the holidays be ever in your favor!

**BOOKS**

**WHO DECIDES? STATES AS LABORATORIES OF CONSTITUTIONAL EXPERIMENTATION,**
BY THE HONORABLE JEFFREY SUTTON
$29.99 HARDCOVER

In America’s fractured political climate, it’s easy to feel that it’s impossible to find a measured way to frame the discussion or engage with others over volatile subjects. Last year we shared *How to Have Impossible Conversations*, and this year we offer some works that will provide context and perspective for anyone who may wade into a sociopolitical firing squad.

While reasonable minds may differ about the role and scope of the federal government, it’s easily forgotten that state constitutions and courts are equally important in balancing governments’ varied roles. In *Who Decides?*, Judge Sutton expounds on the “remarkably complex, nuanced, [and] ever-changing federalist system, one that ought to make lawyers and litigants pause before reflexively assuming that the United States Supreme Court alone has the answers to our vexing constitutional questions.”

BY LINDA GREENHOUSE
$23.49 HARDCOVER

Linda Greenhouse is not only a recent DBA Bench & Bar keynote speaker, but also a Pulitzer prize winning journalist and prolific author who has written extensively about the Supreme Court. Her newest book, as its full title indicates, focuses on a single, transformative year in Supreme Court history. The account has been described by Laurence Tribe as “moving at the pace of a thriller and teaching more about the court as an institution and the law as a discipline than any book of its length has any right to do.”

**THE SCOUT MINDSET: WHY SOME PEOPLE SEE THINGS CLEARLY AND OTHERS DON’T**
BY JULIA GALEF
$16.20 HARDCOVER

The Scout Mindset is not strictly law related, but we’ve all found ourselves in situations where it’s nigh impossible to get on the same wavelength as a conversational partner. Julia Galef discusses the difference between the “soldier” mindset, where tribalism, wishful thinking, and rationalization drive us to defend the ideas we most want to believe—and shoot down those we don’t—and the “scout” mindset, where the goal is to research or survey the territory/topic and come back with as much information as possible. “Regardless of what they hope to be the case, above all, the ‘scout’ wants to know what’s actually true.”

**TRAVEL**

Now that life is letting us all get out and travel, we’re forced to remember how much packing our trips required—and how little cargo space we had in our vehicles. But never fear, the CLIQ Chair makes both concerns disappear! This is the perfect gift for someone seeking leisure in any locale as each chair folds up to the size of a water bottle while still being tough enough to support 300lbs. PLUS, a bundle with enough seating for three couples only requires the storage space of a literal six-pack! Convenience and comfort never came so easily.

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Have the last twenty-ish months left you feeling so thoroughly cooped up and “online” that you need to travel off-grid, but you don’t want to go far? Or do you want to pair a work/pleasure trip to a big city with a short nature detox? Maybe you’d like to gift yourself. Then Getaway cabins are the perfect fit! With locations near most major US cities, and two of them only a half-day’s drive from Dayton (Pittsburgh and Chicago), you can have all the cozy modern amenities of home while enjoying a secluded, rustic escape from the urban landscape. As a satisfied customer who spent a solo Christmas in one of their Pittsburgh-area cabins, I highly recommended this experience.

Getaway Cabins getaway.house
STARTING FROM $149/NIGHT
Once deemed an **Honorary Member** of the DBA, members are exempt from the payment of dues. However, there are those who take honorary status in title only and continue to contribute financially to the DBA.

We wish to thank and recognize the following exemplary **Honorary Sustaining Members**!

### 2021-2022 DBA Honorary Sustaining Members

<table>
<thead>
<tr>
<th>David Grieshop</th>
<th>Brian Weaver</th>
<th>Jeffrey Winwood</th>
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<td>John Rion</td>
<td>Dan Weiner</td>
<td>Hon. (Ret.) William Wolff</td>
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<td>Louis Tracy</td>
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#### 2021-2022 DBA SUSTAINING MEMBERS

Thank you for your added support of our association.

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The **100% Club** is a special category of membership that demonstrates a commitment to the legal profession and our community.

**100% Club Firms** are those in which all attorney’s are DBA members. All firms and legal organizations with two or more attorneys are invited to join the Club! Contact Chris calbrekton@daybar.org (937) 222-7621

Thank You to the 2021-2022 law firm & organization club members!

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### 40-50 Members
- Montgomery County Public Defender’s Office

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To Bail or Not to Bail

When I first took the bench at the beginning of this year, I knew very little about bail. Okay, to be completely honest, everything about how courts set bond amounts baffled me because it seemed so inconsistent. Being on the bench now close to a year, that perception has not changed.

We have all heard discussions about bail reform in recent months and years. In essence, the advocates of bail reform seek to eliminate or at a minimum temper the financial aspects of bail to ensure that a person’s wealth is not what determines whether they are incarcerated prior to trial. This article is not about bail reform, but rather a discussion of the current law surrounding bond in Ohio. This discussion may provide some explanation of why the bail reform movement may have started.

The analysis begins with the Ohio Constitution, which states: “All persons shall be bailable by sufficient sureties, except for a person who is charged with a capital offense where the proof is evident or the presumption great and where the person poses a substantial risk of serious physical harm to any person or to the community.** Excessive bail shall not be required.**” The Constitution therefore instructs that a person is either bailable or non-bailable.

If the state or the court believes a defendant is non-bailable, one or the other must file a motion under R.C. 2937.222, and the court must hold a hearing to determine whether the defendant should be denied bail. The state has the burden to prove “that the proof is evident or the presumption great that the accused committed the offense with which the accused is charged, of proving that the accused poses a substantial risk of serious physical harm to any person or to the community, and of proving that no release conditions will reasonably assure the safety of that person and the community.” At the hearing, the court must consider the factors outlined in section (C) of the statute. This statute and this process only applies upon motion of the state or the court to deny bail. If no such motion is filed, the individual is considered bailable.

In circumstances where the individual is bailable, the court must analyze Crim. R. 46. This analysis begins with the understanding that “it is unlawful to set a bail so high that it ‘accomplishes with money what courts could not otherwise achieve without following the due-process requirements in R.C. 2937.222.” Any financial conditions of release “shall be related to the defendant’s risk of non-appearance, the seriousness of the offense, and the previous criminal record of the defendant. Any financial conditions shall be in an amount and type which are least costly to the defendant while also sufficient to reasonably assure the defendant’s future appearance in court.” In other words, the purpose of bail is to allow a defendant to be released, not to ensure he or she remains in custody. In fact, “setting a high bail in order to keep someone accused of a crime incarcerated before trial is both statutorily and constitutionally unlawful.” The goal is to set financial conditions in an amount which (1) the defendant is able to post to be released, and (2) the danger of losing the posted bond is sufficient motivation for him or her to return to court.

ENDNOTES:
1 While there is other authority that discusses bond, these authorities are relevant to the present discussion.
2 Ohio Constitution Article I, Section 9.
3 R.C. 2937.222(A).
5 Crim. R. 46(B).
6 Mohamed, at ¶ 17 at ¶ 19.
7 Id. at ¶ 24, citing R.C. 2937.222; State v. Bevacqua, 147 Ohio St. 20, 22, 67 N.E.2d 786 (1946).
To determine the conditions of bail, courts must consider the factors outlined in Crim. R. 46(C):

(1) The nature and circumstances of the crime charged, and specifically whether the defendant used or had access to a weapon;
(2) The weight of the evidence against the defendant;
(3) The confirmation of the defendant’s identity;
(4) The defendant’s family ties, employment, financial resources, character, mental condition, length of residence in the community, jurisdiction of residence, record of convictions, record of appearance at court proceedings or of flight to avoid prosecution;
(5) Whether the defendant is on probation, a community control sanction, parole, post-release control, bail, or under a court protection order.

Proper application of these factors should ensure against the imposition of excessive bail for the wrong reasons, a right protected by the Constitution. It maintains the focus on assuring the defendant’s appearance instead of artificially inflating the bail amount so it cannot be satisfied.

The most important takeaway from Ohio precedent is that if a defendant is considered bailable, the financial conditions must reflect an amount defendant can afford to allow release (taking all relevant factors into consideration), not to ensure his continued incarceration. The financial condition must be sufficient, however, to ensure his return to court. As the above courts have recognized, this is not an easy task.

Nonetheless, the old school method of using the standard bail schedules for each felony level is simply not proper under Ohio law. Courts are required to examine all of the Crim. R. 46(C) factors to ensure the bond amount is appropriate for the specific defendant. This likely means courts will need to conduct more bond hearings. However, when the issue is an individual’s freedom prior to the ultimate determination of his or her guilt, perhaps the burden of additional hearings is worth the time to get it right.

ENDNOTES:

4 Id. at ¶ 20.
5 Ohio Crim. R. 46(C).
6 Dubose v. McGuffey, 1st Dist. Hamilton No. C-210489, 2021-Ohio-3815, ¶ 25 (holding bail in a murder case to be excessive when the court failed to consider defendant’s ability to pay); Periandri v. McFaul, 142 Ohio App.3d 588, 592 (8th Dist. 2001) (finding bail amount in attempted aggravated murder case to be excessive when weighing low risk of flight, prior successful completion of probation, no passport, and turning himself in).

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As the end of the year approaches, we are asking you to financially support the Dayton Bar Foundation, the charitable giving arm of the Greater Dayton Legal Community.

Your contribution will make a real difference in the lives of many people in our local Greater Dayton community. Please help our Dayton Bar Foundation continue its tradition of supporting local community and charitable organizations.

We encourage you to join in our Foundation’s mission by making a year-end charitable contribution to the Dayton Bar Foundation (a 501 c3 charitable organization since 1984). Every dollar received will help to provide grants to local organizations.

Thank you in advance for your continued generosity. The Dayton Bar Foundation could not do its good work without your support and participation.

~Brian Wildermuth Esq. 2021–2022 DBF President
Subashi Wildermuth & Justice

**SUPPORT:**
The tireless efforts of your fellow members of the legal community who defend those who need it the most.

**HELP:**
Local disadvantaged citizens. Families in need of assistance. Those trying to navigate the legal system. Provide wills to those who have served our country.

**STRENGTHEN:**
The Foundation and charitable giving arm of the Dayton Bar Association as they continue their many great works!

**EDUCATE:**
Professional training in law & leadership for those with a desire to learn about the law and sustain a career in the legal field.
Your Gift Will Help STRENGTHEN Our Foundation.

The Dayton Bar Foundation (DBF) is a 501 (c)(3) charitable organization and serves as the giving arm of the Greater Dayton Legal Community. Your contribution will enable the DBF to continue to fulfill its mission of funding innovative local organizations in their quest to improve our community by promoting equal access to justice and respect for the law. In the past few years your contributions helped to fund grants to:

- **Advocates for Basic Legal Equality (ABLE)**
- **Catholic Social Services of the Miami Valley**
- **Greater Dayton Volunteer Lawyers Project (GDVLP)**
- **Law & Leadership Institute**
- **Legal Aid of Western Ohio (LAWO)**
- **Life Essentials Guardianship Program**
- **Miami University Pre-Law Center**
- **Wills for Heroes**

All gifts are eligible for charitable deductions on your federal income tax return if you itemize deductions.

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Dayton Bar Foundation, 109 N. Main St., Ste. 600, Dayton OH 45402-1129
Contributions may also be submitted online: daybar.org/?pg=Foundation
Make a donation now and help us make a difference through our programs.
Gifts may also be made in honor or in memory of family, friends or colleagues.

I am pleased to support the Dayton Bar Foundation with a gift of:

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The Greater Dayton Area Diversity, Equity & Inclusion Legal Roundtable Meeting

On Monday, October 25th a meeting of the Greater Dayton Area Diversity, Equity & Inclusion Legal Roundtable was hosted by the University of Dayton School of Law. With both in-person and virtual options, the attendees represented a cross section of legal roundtable members - UDSD students, students from Sinclair, lawyers from local firms, UDSD dean and professors and judges.

A panel discussion with DE&I professionals provided interesting perspectives. Panelists were: Rhonda Talford Knight, Ph.D., Chief Diversity, Equity & Inclusion Officer, Bricker & Eckler, Columbus; Patrice Harris, Director, Diversity, Equity & Inclusion, CareSource, Dayton; and Aleia Hornsby, Manager of Diversity, Equity & Inclusion, Thompson Hine LLP.

Update on Mentoring Program
The Mentoring Program’s key dates include:

- November 11, 2021 - Registration opens for interested students and practitioners
- End of December 2021 - Mentoring pairs assigned
- January 13, 2022 - in-person kick-off event at UDSD

Planning committee includes: Dez'any Johnson (President, UDSD's Black Law Student Association), Nicole Vega (President, Hispanic Law Student Association), Sarah Chi (President, Asian and Pacific Islander Law Student Association), Zion Savory and Cori Haper (both at Thompson Hine LLP). For inquiries, please contact Cori Haper Cori.Haper@ThompsonHine.com or Zion Savory Zion.Savory@ThompsonHine.com.

Dayton Business Journal’s Diversity Champion Award Event
On October 14th, Wray Blattner accepted the Dayton Business Journal’s Outstanding Diversity Champion Organization award on behalf of the Legal Roundtable.

Flyer Legal Promise Program – University of Dayton School of Law
Taft Law and Thompson Hine have committed to UDSD’s Flyer Legal Promise program. With financial support from the two law firms, the program will provide two underrepresented students with full law school tuition, a $15,000 yearly stipend, mentors, summer clerkships and a job at each of the firms following graduation. For inquiries, contact Julie Zink jzink1@udayton.edu or visit https://udayton.co/Svr/.

Membership
The Legal Roundtable focuses on implementing strategies to increase diversity, promote inclusion and advance equity in the Dayton-area legal community. Meetings of the Greater Dayton Area Diversity, Equity & Inclusion Legal Roundtable are open to all legal professionals and law students. For more information or to be added to the Roundtable mailing list, please contact Ellen.Geron@ThompsonHine.com.
I choose to volunteer with Volunteer Lawyers Project (“VLP”) to give back to the community that gives so much to me. I have always felt most rewarded when helping others and I believe VLP’s overall values align with mine. Through school, I enjoyed helping with fundraisers and volunteering at food pantries and animal rescues. So, I became a lawyer to help others while making a living out of doing so. I can almost hear some cynical laughter here, but I’m talking big picture; if we all do a little each day to help others, we can create a better world. To get here it took the help of my family, teachers, neighbors, friends and countless others. Each person along my way to today helped me in some form; big or small and now I do my best to do the same through VLP and other charitable endeavors (lots of animal rescue in my “spare” time). I start for-profit businesses, non-profit corporations, draft business plans, estate plans and settle estates. Of course, my job is...a job...so I do get paid by those who can afford to pay for services rendered. But I’m lucky enough to have the opportunity to turn around and help others that cannot afford to pay for legal services, through VLP. I am grateful each time I can help someone in a place of need get to a place where they can then help themselves moving forward and through VLP I’m able to do that.”
**Ohio Lawyers Assistance Program**

**What would you do?**

**Lawyer A** is 65 years old, and has been practicing for 40 years. His skills and demeanor have always been steady, and others at the practice respect and look up to him—until recently. Lawyer A has been missing deadlines, calling clients by the wrong names, and forgetting about certain cases. He is just not the same. Others are starting to talk openly about his erratic behavior and forgetfulness. What should you do to help Lawyer A in this situation?

**Judge B** has been a respected member of the judiciary for 16 years, but you notice that recently he has been engaging in conduct that is unlike him and that is inconsistent with his judicial obligations. He has failed to prepare for hearings, has been short with and has had combative interactions with staff and colleagues, has attempted to defer his judicial authority to a staff member, is frequently absent with no excuses, and has also exposed the court's computer network to viruses. What are you required to do to help Judge B in this situation?

**Lawyer C** has made it obvious to others that she has been abusing substances before, during and after work. She stumbles around the office, slurs her words, smells like alcohol, and she falls asleep in her office. You approach her about how others have been noticing that she has been behaving differently and not in accordance with her duties. Lawyer C shoos you away, and tells you to mind your own business because you do not know what you are talking about. She claims that she is perfectly fine. What should you do to help Lawyer C?

It is difficult for a lawyer or a judge to be in distress, or (614) 586-0621. For more information, go to ohiolap.org or call (800) 348-4343

**How you can help**

According to Ohio Professional Rule of Conduct Rule 8.3, Reporting Professional Misconduct, "a lawyer who possesses unprivileged knowledge of a violation of the Ohio Rules of Professional Conduct that raises a question as to any lawyer’s honesty, trustworthiness, or fitness as a lawyer in other respects, shall inform a disciplinary authority empowered to investigate or act upon such a violation."

Call the Ohio Lawyers Assistance Program to discuss how to approach the person in distress. OLAP helps legal professionals with personal and professional issues. OLAP can assess whether a person truly needs assistance, and what kind of help might be appropriate. Remember that by contacting OLAP, you are not “snitching” on a person. You are trying to help. You could help save a life.

If you contact OLAP, you can rest assured that your call and anything you discuss with OLAP will be protected by strong rules of confidentiality:

- Prof. Cond. Rule 8.3(c) provides an exemption from the duty to report knowledge of ethical violations when that knowledge was obtained in the course of OLAP’s work.
- Code of Judicial Conduct Rule 2.14 provides that information obtained by a member or agent of a bar of judicial association working with OLAP shall be privileged.
- R.C. §2305.28 provides qualified immunity from civil liability for OLAP staff (B and C) and for anyone who provides information to OLAP (D).

**When you contact OLAP**

- We will ask you the reasons for your concern and about other information regarding the attorney or judge.
- We will ask you about others who might provide additional information or corroborate your observations, such as a colleague, a spouse or a friend.
- OLAP’s professional staff will assess the information to make a provisional determination about what may be happening.
- OLAP will decide what help might be appropriate and how to offer it in the best way.

As legal professionals, we have a responsibility and duty to protect the public and to maintain the integrity of the legal profession. If you notice that an attorney or judge might be experiencing age-related cognitive decline, depression, anxiety, substance use disorder, or other issues that are affecting them as a human being, let alone their ability to practice competently, it is time to help. Not only are you helping them personally, but you are protecting the public from a person who is not doing his sworn oath of helping people.

If you are unhappy, depressed, suffering from substance use disorder, burnout, or stress, and you believe it is affecting your life, the Ohio Lawyers Assistance Program can provide CONFIDENTIAL help. For more information, go to ohiolap.org or call (800) 348-4343 or (614) 586-0621.

**By Scott R. Mote, Executive Director**

OLAP

SMote@olap.org
The late Herbert M. Eikenbary granted the bulk of his estate to fund Grants and Loans to lawyers under the age of 35 who practice/reside in Montgomery County. These Grants and Loans are to aid young, deserving lawyers who are in need of financial assistance.

Individual loans, are available up to $6,000 at 4% interest, while grants up to $4,000 are also available.

To Apply: Jennifer Otchy, DBA Chief Executive Officer
Dayton Bar Association | 109 N. Main St., Suite 600 | Dayton, OH 45402-1129
jotchy@daybar.org | 937.222.7902 | www.daybar.org
Coolidge Wall Co., L.P.A. is pleased to announce the hiring of two new associates, Rodrigo Horna and Sarah Sparks.

Rodrigo Horna joined the firm as an associate in its Estate Planning and Tax Department. “We are very happy to have Rodrigo join our group,” said Chad Hansen, chair of the firm’s Estate Planning and Tax Department. “The addition of Rodrigo provides us with additional depth in this growing practice area within the firm.”

His practice mainly involves working within the areas of estate planning, trust and probate and tax. Rodrigo was born and raised in Lima, Peru, and is fluent in Spanish. Rodrigo attended law school at the National University of San Marcos (Lima, Peru) and graduated in 2016 at the top of his class; worked at a renowned firm; as well as in-house for a local bank. Rodrigo came to the US in 2018 to pursue a Master of Arts degree at the University of Cincinnati. During law school, Rodrigo completed internships with the City of Cincinnati. Rodrigo also worked at Coolidge as a law clerk.

Sarah Sparks joined the firm as an associate in its Litigation and Public Sector Departments. “Sarah joins us with a wealth of real-world business experience having served as the Operations Director for a key local non-profit organization for several years. In addition to her law license, Sarah also holds a Master of Public Administration degree. She will add to our already deep bench in both the litigation and public sector practice groups.” said David Pierce, Chair of the firm’s Litigation Department.

Before Coolidge and completing law school, Sarah worked for Saltchuk Resources in Seattle, Washington, as a legal assistant for the general counsel. Prior to that she worked at the Seattle Food Bank and was director of operations at the Foodbank, Inc. in Dayton. Sarah earned her MPA from Wright State University, her Bachelor of Arts degree with honors in Sociology from the University of Cincinnati, and J.D. from the University of Dayton (cum laude) in May 2021. While at UD, Sarah was selected as a Dean’s Fellow and mentored incoming students as they adjusted to law school.

Kirkland & Sommers Co., LPA has announced the addition of the firm’s new female attorney, Dayton native Mickenzie R. Grubb. Mickenzie is a graduate of San Diego State University and the University of Dayton, School of Law, where she served as Editor of the Dayton Law Review, followed by a term on the Executive Board. She was also elected to the office of President, 1L Board of the Student Bar Association, and served as a Dean’s Fellow to help first-year law students achieve academic success. Mickenzie has been a law clerk at Kirkland & Sommers Co., LPA since 2019, immersing herself into the field of family law while finishing her law degree. Mickenzie obtained her Juris Doctorate in May, 2021, with a concentration in Personal and Family Law.

As a family lawyer, Mickenzie will focus on practice areas including divorce, child custody, visitation, adoption, spousal support, and domestic relations. Mickenzie will be based out of the firm’s Dayton office but will be available to serve clients in the greater Dayton 10-county area.

**Members on the Move Guidelines:**

If you are a member of the DBA and you’ve moved, been promoted, hired an associate, taken on a partner, received an award, or have other news to share, we’d like to hear from you!

- News of CLE presentations & political announcements not accepted
- Printed at no cost
- Must be submitted via email and are subject to editing
- Printed as space is available

Contact Shayla to submit your announcement or ad: seggletone@daybar.org | 937.222.7902
Power your law practice with industry-leading legal research. Fastcase is a free member benefit of the Dayton Bar Association.

LEARN MORE AT WWW.DAYBAR.ORG
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