

# Ipsos Jure



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A PUBLICATION OF THE GEAUGA COUNTY BAR ASSOCIATION  
EDITED BY PAUL A. NEWMAN, ESQ.

## LAW DAY 2006

The next General Meeting of the Geauga County Bar Association will be for Law Day, Friday, April 28 at Noon at Berkshire Hills Country Club. **Millard Farmer, Esq.** will discuss the Death Penalty in America. In addition, the GCBA will recognize the Law Enforcement Officer of the Year. Please see the enclosed flyer for more information and to register.



## 1<sup>ST</sup> ANNUAL CHILI COOK OFF

The First Annual Chili Cook Off was quite a success. Over \$300 was raised for the Geauga Humane Society. Taking first place was **Ann D'Amico's** Pasta Fagioli. **Carolyn Paschke** earned second place honors with her Seafood Chili. **Paul Newman's** Venison Chili was voted 3<sup>rd</sup> best. The committee would like to thank **F.M. Apicella, Pat Brice, Annie Edgington, Laura Flaiz, Elaine Tassi,** and **Mary Jane Trapp** for contributing excellent



chili as well.



## FREE CLE

President **Stephen Macek** has arranged for 1 hour of free CLE at the General Meeting of the Bar on May 24. **Jeffrey Fortkamp** will be discussing IOLTA and IOTA accounts. Lunch will be \$10 and begin at Noon at Bass Lake Tavern. Preregistration is not required.



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## 2006 FIRST FRIDAY PROGRAMS

**Christine Seymour**, chair of the GCBA's CLE Committee, has a tentative program. Topics include: Bankruptcy, Mediation, Business Valuations & finding hidden income in Domestic Relations Cases, Municipal Court Updates, changes to the Geauga County Local Rules and of course, the Ethics, Substance Abuse and Professionalism credits. The first program will be July 7. The seminars will begin in the 8 o'clock hour and be for 2 hours at the 141 Main Street Café. A continental breakfast will be provided. There will be a discount for preregistering for all the programs. More information will be available in May.





## PRESIDENT'S COLUMN

STEPHEN G. MACEK, ESQ.

**W**ell, we're in full swing. The Bar Poll Committee is busy tabulating results.

The Community Service Committee just held a chili cook-off fund raiser for the Humane Society at the Geauga Park District's Great Blue Heron Lodge.

My congratulations go out to chefs **Ann D'Amico, Carolyn Paschke** and **Paul Newman** for their award winning chili. And, the Law Day Committee is getting ready for our annual Law Day Luncheon, scheduled for Friday, April 28th. My thanks to Chairs **Ann D'Amico, Mary Jane Trapp** and **Bob Umholtz** and their committees.

The Maple Festival is just around the corner. Having practiced in Chardon, I realize that this can be a mixed blessing for some practitioners... With all the noise and commotion, not much legal work gets accomplished while the festival is on. Nonetheless, Geauga lawyers and maple syrup seem to go together. **Judge Edwin Hofstetter**, who passed away in March, used to boil sap in a little 2 by 6 stainless steel pan using natural gas. It was slick. He made some quality syrup most of which was given away to friends, relatives, fellow judges and guest speakers at GCBA luncheons. **Mark Sperry** had a large sugar bush on "Dead-end Shedd" road in Middlefield and would invite friends out to enjoy the camaraderie of boiling each spring. His wife, Agnes, continues this practice. Ancestors of **Judge Chip Henry** and **Magistrate Dody Lee** had a huge sugar bush in Bainbridge in the late 1800s. They would hang about 2,000 buckets and boil the sap using steam from a boiler to avoid burning the pans. The lawyer involved in this endeavor was their great grandfather, **Frederick Henry**, who, following his sugaring days, sat on what is now the Eighth District Court of Appeals.

There will be a free one hour CLE at our May luncheon. The topic will be IOLTA and IOTA accounts. The presenter will be attorney **Jeffrey Fortkamp** of the Ohio Legal Assistance Foundation. Hope you can make it.



## GEAUGA COUNTY'S BICENTENNIAL CELEBRATION

**O**n March 18, 2006 Members of the bar participated in the re-enactment of the murder trial of Benjamin Wright Jr. Mr. Wright was found guilty and sentenced to hang to death on March 18, 1823. It was the only public hanging in Geauga County. **Paul Newman, The Hon. Forrest W. Burt, The Hon. David L. Fuhry** and **Ed Brice** acted in the courtroom drama.



Defense Attorney James Paine, Esq.



Judge George Tod presided over the trial.



Sheriff Ford testified at Wright's trial



Prosecutor Alfred Phelps, Esq.





# 11<sup>TH</sup> DISTRICT COURT OF APPEALS

SUMMARIES BY LINDA  
IRELAND

In *Music Express Broadcasting Corp. v. Aloha Sports, Inc.*, 161 Ohio App.3d 737, 2005-Ohio-3401, appellant, David Rice, appealed from the judgment of the Chardon Municipal Court holding him personally accountable for the liability of defendant Aloha Sports, Inc., a company of which appellant was the majority shareholder. In affirming the judgment of the trial court, the Eleventh District Court of Appeals held the trial court did not abuse its discretion in adopting the magistrate’s decision permitting appellee to pierce the corporate veil. The reviewing court underscored the three-pronged test for disregarding a corporate entity, i.e. (1) the shareholder and corporation are fundamentally indistinguishable; (2) the shareholder exercised control over the corporation in such a manner as

to commit fraud or an illegal act against the person seeking to disregard the corporate entity, and (3) injury or unjust loss resulting to the plaintiff from the shareholder’s control or wrongdoing. See, *Belvedere v. Condominium Unit Owners’ Assn v.*



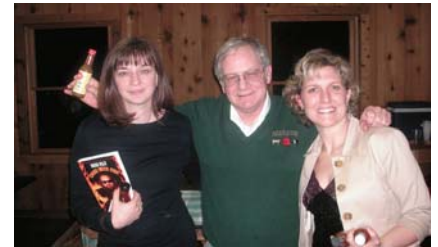
Steve Macek, Lynne Day, and Heidi Cisan were the successful bidders on the Geauga Humane Society apparel.

*R.E. Roark Companies, Inc.*, 67 Ohio St.3d 274, 1993-Ohio-119. Applying the specific facts of the case to the foregoing elements, the appellate court determined appellee set forth adequate evidence to meet its burden. Accordingly, appellant’s assigned errors were overruled.

In *State v. Dougherty*, 11th Dist. No. 2003-G-2545, 2005-Ohio-3409, the court of appeals affirmed the judgment of the Geauga County Court of Common Pleas denying appellant’s “motion to correct improper sentence.” In his motion to the trial court and on appeal, appellant

contended he was misinformed regarding the nature of the sentence he was obligated to serve given the charge to which he pled. Appellant therefore maintained his plea was based upon misinformation and therefore neither knowingly nor voluntarily. Further, appellant maintained his “motion to correct improper sentence” was made pursuant to R.C. 2953.21, Ohio’s postconviction relief statute, which requires a trial court to hold an evidentiary hearing where a petitioner asserts “substantive

grounds for relief.” R.C. 2953.21(C). In response, the state contended that while appellant styled his “motion to correct improper sentence” as a petition for postconviction relief, it should be



Ann D’Amico, Paul Newman and Carolyn Paschke, the 1<sup>st</sup>, 3<sup>rd</sup>, and 2<sup>nd</sup> place winners respectively of the chili cook off.

treated, under the circumstances, as a Crim.R. 32.1 motion to withdraw guilty plea. The court of appeals agreed with the state’s position as appellant failed to assert a constitutional error in his motion, a necessary precondition for postconviction relief. After reviewing the record, the court determined no manifest injustice occurred during appellant’s plea hearing. Accordingly, the trial court did not abuse its discretion in overruling appellant’s Crim.R. 32.1 motion.

On February 24, 2006, the court of appeals decided *State v. Bagnall*, 11th Dist. No. 2005-L-029, 2006-Ohio-870. Bagnall appealed his classification as a “sexual predator,” following his plea to three counts of rape, on the grounds that the evidence did not support this classification. The court of appeals affirmed the classification. The court held that, although Bagnall did not have a prior history of sexual offenses and was evaluated as having a low-moderate risk of recidivism, the following facts were used in the classification: Bagnall groomed his victim; Bagnall manipulated the victim by virtue of being her father; the abuse continued over a period of ten months; Bagnall suffers from depression and anxiety disorder; and Bagnall blamed the victim for initiating the encounters.



# THE IMPORTANCE OF A FAIR AND IMPARTIAL JUDICIARY-LAW DAY

## REMARKS OF THE OSBA PRESIDENT

BY MARY JANE TRAPP, ESQ. APICELLA & TRAPP

**P**REFACE-As I sat down to write my Ipso Jure article about judicial independence, my good friend and current Ohio State Bar Association President, **E. Jane Taylor** of Akron, shared with me an advance copy of her law day speech. Jane’s speech captured so well all of my thoughts on this timely topic that I asked for permission to share her speech with you prior to its release to the public and press. MJT

“Law Day was established by President Dwight Eisenhower in 1958 to commemorate our



Annie Edgington and Michael Caticcho count the ballots for the best Chili.

American heritage of liberty, justice and equality under the law. This day provides us all with an opportunity to reflect on these important democratic principles, and to re-commit

ourselves to upholding them...

More than two hundred years ago, our nation’s founders designed a constitutional democracy based on a system of checks and balances. A fundamental part of this system is a fair, impartial and independent judiciary—judges who are able to act without concern for the day-to-day whims of politics, and election-focused politicians, to protect every citizen’s individual liberties, uphold our Constitutional rights, and prevent the tyranny of the majority.

For more than two centuries—for as long as our nation has existed—this separation of powers has worked to protect and defend our freedom. Our progress as a society often has been forged by a judiciary free from partisan politics; a judiciary acting on the basis of what is right and just, not

what is popular; a judiciary able to protect the ordinary citizen.

A recent report by Justice At Stake, a national partnership working for fair and impartial courts, showed a bipartisan majority of Americans -- 84% of those surveyed -- value the role our courts play in protecting individual rights and providing access to justice. They want courts to be fair, impartial and guided by the law and the Constitution – not by political pressure and special interests.



Heidi Cisan, Kelly Slattery and Ann D’Amico conversing at the chili cookoff.

These reports are encouraging especially at a time when a growing vocal minority of citizen groups, and an alarming number of our leaders, are attacking our judiciary and demonstrating a lack of respect for this governmental branch that is charged with insuring access to justice.

Not that long ago, we saw a rush to judgment by the executive and legislative branches in the Shiavo case. Members of Congress who disagreed with the court’s decision threatened, “The time will come for the men responsible for this to answer for their behavior.” They referred to the federal judges who issued opinions they did not agree with.



Lynne Day, Carolyn Paschke, Perrin Sah, and Dave & Susan Proboski all enjoyed the chili.

Just weeks ago, Ohio was at the center of attention locally and nationally because a

judge in Columbus crafted a sentence that provided house arrest and treatment instead of jail time for a sex offender. The facts are that the case resulted in a plea bargain and the judge exercised discretion based on the facts presented in court. The facts did not stop members of the public and elected government officials from expressing disapproval with the judge’s decision, or from calling for investigations and even the judge’s impeachment. The Ohio State Bar Association advised those concerned to gather the facts and then determine which, if any, of the Constitutional provisions that exist for reviewing judicial conduct might be appropriate to consider. We urged the executive and

legislative branches in Ohio to proceed cautiously, to gather all the pertinent facts and not rush to judgment. We believe that those who called for careful, thoughtful investigations were on the right track. It is vitally important for Ohioans to understand that our disagreement with a judicial decision cannot be allowed to undermine a fair and impartial judiciary...



Mary Jane Trapp and Dorothy Lee at the cookoff.

This most recent case reminds us that judges have been under attack not because they have committed an offense worthy of impeachment or other disciplinary proceeding, but simply because highly publicized rulings they have made are unpopular.

It may be easy to understand, and even sympathize with, those who are sometimes disappointed with seemingly inappropriate or unfair judicial decisions. But imagine if

judges could be removed from the bench simply because some disagree with their decisions? Would the falsely accused have a fair opportunity to vindicate themselves in court? Would ordinary citizens or business interests have an impartial forum to seek redress? ...



Ed Brice acted as auctioneer for the Rescue Village apparel.

The history of our nation is filled with examples of how our courts, working independently and free from political intrusion and oversight, have issued controversial and sometimes very divisive opinions, always accountable to the Constitution, the Rule of Law and most importantly to the respect of the people. Think back for a

moment to the year 2000, the decision by the Supreme Court of the United States in Bush v. Gore. A more highly charged political environment with a nation divided and the presidency to be decided by just a few votes. The Court decided the case. The loser stated

disagreement with the decision, but respect for the Rule of Law. No riots in the streets, no martial law declared. We went about our business and life went on. Respect for the Rule of Law prevailed and our governmental structure remained in tact.



Linda and Doug Brown at the chili cookoff.

There have also been times when the courts have not measured up to their Constitutional responsibilities, but for the most part, our courts have been true to their Constitutional charge in areas such as ending the vicious practices of segregation, in extending voting rights to all Americans, and in protecting average citizens from unwarranted government intrusion. We should be proud of this legacy.

We must not forget the role of the justice system as a defender—a defender of society against those who commit crimes, a defender of the free enterprise system, and a defender of individual liberties.

I believe that, as citizens, we must stand up for fair and impartial courts and the public's access to justice. So how can we help insure that the judicial system remains fair and impartial? To start, do not remain silent when the judiciary is attacked. Get the facts and share with those involved the importance of a fair and impartial judiciary to the preservation of our democracy...

We must not forget that the American justice system resolves 100 million cases each year—simple, complex, routine, extraordinary. Most of these cases are resolved successfully, fairly and impartially, under the rule of law. A few are not, but our system provides a Constitutional process so that wrongs may be righted insofar as is possible under the law. We cannot allow a vocal minority to undermine the delicate balance among the branches of government that has been crafted by our founding fathers. To undermine this balance would mark a departure for our nation—a ripping up of our Constitution and its values – the very Constitution we hold up as a model to struggling nations throughout the world... “



Congratulations to Denise & Todd Hicks, proud parents of Cooper, born 2/20/06.





The Geauga County Bar Association  
 in conjunction with  
 The League of Women Voters of Geauga County &  
 The Geauga County Public Library  
 Present the

# Geauga Free Speech Forum

## “The Death Penalty in America”

featuring  
 Millard Farmer, Esq.



Millard Farmer is not only an outstanding and riveting speaker but is a recognized authority on strategy in litigating capital cases. He has been a pioneer in transferring real world issues into legal and constitutional issues with innovative motions and legal procedures. His strategies enlarge the jury box and courtroom.

The Bar Association will also be presenting the award for  
**Law Enforcement Officer of the Year**

April 28, 2006  
 Noon, Lunch, \$15 / \$10 for Students  
 12:30, program, free and open to the public.

Berkshire Hills Country Club  
 9760 Mayfield Road  
 Chesterland

The menu will be “A Taste of Italy” which includes Chicken Medallions in an herb garlic sauce, penne pasta marinara, steamed vegetables, and fresh baked strudel

RSVP by April 20, 2006 to: Geauga County Bar Association, P.O. Box 750, Chardon, Ohio 44024 Questions? Call (440) 279-2087 or e-mail [gcll@nls.net](mailto:gcll@nls.net)

- 9 Yes, I plan to attend the program only. Please reserve a place for me.
- 9 Yes, I plan to come to the lunch and program. Enclosed is my check for \$15, payable to the Geauga County Bar Association
- 9 Yes, I plan to come to the lunch and program & I am a **student**. Enclosed is my check for **\$10**, payable to the Geauga County Bar Association

Name: \_\_\_\_\_ Phone: \_\_\_\_\_

e-mail: \_\_\_\_\_

RSVP: Geauga County Bar Association, P.O. Box 750, Chardon, OH 44024

# AN HISTORICAL VIGNETTE

BY PAUL A. NEWMAN, EDITOR

I thought it time to visit history. This publication, *Ipsa Jure*, was first published on May 24, 1978. I was the editor at that time, and somehow, I am still the editor. There were several editors in the interim, but alas, the job has



In addition to a wide variety of chilis, everyone enjoyed appetizers (ask someone that was there about the guacamole), pizza and desserts.

again devolved upon me. Although I enjoy it, I want all of the new young attorneys in the bar to know that I am willing to be replaced in this job as editor at any time. It won't hurt my feelings and I will still contribute. But I am sure there is some literary attorney looking for this job.

*Ipsa Jure* is now 28 years old. I believe

that there was one full year in which it failed to be published, so it has only had 27 productive years. The first issue included articles by **Judge Robert B. Ford, Dale Markowitz, Kent Penhallurick, Daniel Earl Bond, Fred Green, and William C. Hofstetter**. Most are still members of the Geauga Bar, and, by all appearances, still doing well. I haven't seen Judge Ford for several years, but I hear he is still in Burton.

As I review some of the early issues, I am astounded by the recurrence of topics. Abuse of discovery was rampant (nothing has changed), the status of attorneys in the eyes of the general populace remains the same, advertising by attorneys is a concern, and probable cause is still a prime issue in search warrants and personal injury cases.

The name, *Ipsa Jure*, was explicated in the first issue as follows:

The title IPSO JURE is Latin for "by the law itself—by the mere operation of law." This particular title was selected because IPSO JURE will primarily be distributed to members of the bar whose existence is predicated on their knowledge of the law. IPSO JURE will attempt to provide a forum within the legal community of Geauga County, and further, will attempt to

disseminate information heretofore unavailable to members of the Bar. Participation among members of the Bar is expected and welcomed. First Amendment Rights may be freely expressed and will be protected herein.

*Ipsa Jure* has made improvements in its presentation. All type is through computers (there were none back in 1978 available for desks). Color photos are now standard. Articles need not be retyped because they can be copied and pasted in the computer. In this manner, the misspellings are actually the authors' (the editor's culpability is only error in proofreading).

The first issue was fully funded by Chardon Savings Bank, taken over by Bank One, and taken over recently by Chase, I think. It is now funded by the Bar and in part by the Law Library Association by reason of the publication of case squibs from the 11<sup>th</sup> District Court of Appeals.

The editors and contributors over the years have ascribed to make *Ipsa Jure* interesting, informative and entertaining. I think we have succeeded to date and I hope that you enjoy the great efforts put in by your legal compatriots.



## BASIC MEDIATION TRAINING

The Basic Mediation Class will meet the twelve-hour introduction to mediation training requirement of The Supreme Court of Ohio. The course is designed to give participants an overview of mediation and includes introduction to basic methods, skills and process, benefits, and standards/ethics employed in the resolution of conflicts between disputing parties. Power imbalances and diversity considerations of disputants will be highlighted. Class topics will include: why mediation is important to the individual, and community/society; how mediation resolves conflicts; how to apply mediation skills to a range of situations; the steps of mediation; and the attributes of a successful mediator.

The Basic class is a prerequisite to the Becoming A Mediator, a forty-hour class. The forty-hour class will be offered on Saturday mornings later this year. Completion of the Basic class and the 40-hour class: Becoming A Mediator meets the requirements of being a Court-connected mediator in Ohio as defined by the Supreme Court of Ohio. The 40-hour class builds on the basic class and further develops skills with additional knowledge, resources and in a range of family law hands-on cases. It will be an in-depth fast moving and interesting 40-hour training.

## Registration Information

Fee: \$299.00 4 Sessions

CRN: 90567 (CLE's: 12)

6:00 - 9:15 p.m. Wed. 5/10/06 - 5/31/06

Register Online: [www.lakelandcc.edu/LOL](http://www.lakelandcc.edu/LOL)

Register By Phone: 440.525.7116, or toll free,  
1.800.589.8520

Questions regarding the class may be directed to  
Chris Wolf at [animalhousewolf@yahoo.com](mailto:animalhousewolf@yahoo.com)



# AN INTERVIEW WITH DEPUTY MIDGE McCLELLAND

BY ANN D'AMICO, ESQ., ZIMMERMAN, CATICCHO, EISENBERG &  
MODICA

WITH THE HELP OF MACY CATICCHO

**T**here's a new girl in town and her name is Midge. I am sure you've already heard, since she's gotten quite a bit of press. Really good press. There are even rumors that Jay Leno has called. Midge is **Sheriff McClelland's** newest and only female canine

officer. She has yet to crack her first case, but she is already a department standout.

I first saw Midge one night on the local NBC news. She weighs under 5 pounds and is a chihuahua rat terrier mix. Macy (I am sure you remember my dog, Macy) decided she has to meet Midge. It is rare that she sees a dog smaller than herself. So, Macy, Susan Proboski and I went to the Safety Center to check her out.

Midge was the runt of her litter, as was Macy. She is very playful and affectionate. She is very alert. Her ears are very expressive. She listens to everything and when she is tired, her ears flop down a bit and she closes her eyes to sleep. She is beyond cute! Midge was also quite taken with Macy. Macy, being a princess, seemed a little too precious to be hanging out with such a young pup, but did tolerate her sniffing and playing.

Midge lives with Sheriff McClelland and his family, including Buffy, a 16 year old Wheaton Terrier mix. The Sheriff is personally covering all her expenses.

She currently sleeps in a crate (we will see how long that lasts.) She is named Midge, because she is a little friend, like Midge was Barbie's little friend in the world of Mattel Toys. Midge wears a little (and I mean little) black vest that has "SECURITY" written across the back. The Sheriff found it for her during a trip to Indiana. (He must be a really good shopper.) Upon his return, finding that the sweater was a perfect fit for her, he called his son in Indiana to try to get more sweaters without embroidery so that the Sheriff's logo could be put on the sweater. When his son visited the place and explained to the shop owner what he wanted, the shop owner said that she had seen Midge on the news. She called the manufacturer, who had also seen Midge on the news. They were very happy to be able to accommodate his request. Eventually her badge will be embroidered onto her sweater, since she cannot wear a metal badge like the other dogs do. It would probably outweigh her.

It is no surprise that Midge is doing extremely well at public relations and socialization. She has visited kids at Huntsburg Elementary and has also attended a Commissioners' meeting with the Sheriff. She goes out to different locations each week to train as do the other canine deputies. Her main job is going to be searching cars for drugs. She will be able to get into tight spots that the big dogs cannot. Right now, part of her training is fetching a toy that is scented with marijuana, but her favorite toy is a fleece bone. Just like a terrier she is single-minded in her pursuit. Because of her size and speed, the Sheriff refers to her as "The Little Missile."

It is clear that big things will be happening for this little dog.



Sheriff McClelland and Midge at the Safety Center



Macy and Midge at the Sheriff's Office

Ipso Jure  
P.O. Box 750  
Chardon, Ohio 44024