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Cover: Bainbridge Township Police Department and Kurt Dreger, Officer of the Year 2017.

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Law Library Update

Frank Antenucci

Chairman/President of the Geauga County Law Library Board

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For those of you have yet to meet our new Law Library Director, please allow me to formally introduce the wonderful, talented, and perpetually upbeat, Krystal Thompson. Krystal began her service with the Geauga County Law Library on February 27, 2017, and has quickly taken charge of all aspects of the Law Library.

Krystal has extensive experience in numerous aspects of library science, including bibliographic instruction, reference assistance, collection development, acquisitions, cataloging, and financial management. She has served as a librarian at both Bryant and Stratton College and Brown Mackie College where she utilized and honed her theoretical understanding of library science. Her academic background comprises a Master's Degree in Library and Information Science and a Bachelor's Degree in Justice Studies. Krystal brings with her an emphasis in library efficiency and resource creativity at a time when the Law Library is in need of creative solutions to ensure long term sustainability.

Krystal also serves in a dual role as the Executive Secretary for the Geauga County Bar Association and looks to continue the excellent connection between the Bar and the Library. So, if you have yet to meet Krystal, I would encourage you to stop by the Law Library or attend a bar meeting and get to know her.

Municipal Court Changes

Dennis Coyne

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Elizabeth Bena, our civil and all around utility clerk, has gone to college at The Ohio State University. In her absence, Ann Marie Holt is now assisting the Civil Department. Liz will return during her breaks from college to work where she is needed most.

Gayle Hallstrom retired November, 2016 after 33 years. Sue Janu moved from working part-time in Probation to full-time in the Clerk's Office. Sharyl King joined Probation as an assistant in August, 2016.

Karen Murphy resigned in late 2016. She was the court technology clerk and bookkeeper. We welcomed Kimberly Kirkhoff as Technology Clerk and Kimberle Caticchio as Bookkeeper.

Adrian Holloway transferred to the Probation Department from the clerk's office in early 2017, and is working towards his Probation Officer certification.

President's Page: Paving New Paths and Celebrating Legacies

Dennis Coyne

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We all have a lot going on these days. Technology has opened many doors, which were previously locked or too hard to open. Here in Geauga, we are reaching out to surrounding bar associations to coordinate new activities. This includes the Cleveland Metropolitan Bar Association, The Ohio Women's Bar Association, and the Lake County Bar Association.

This past weekend the Geauga Bar teamed with the Legal Aid Society to initiate a free legal clinic for civil matters. We laid the groundwork and will host the clinic on June 17, 2017 from 11:00 a.m.-1:00 p.m. at the community center located in the park in Bainbridge. The objective is to conduct 3 or 4 clinics around different areas of the county to determine legal needs and interest. The Bar Association created a new committee for this project. It will be co-chaired by Ann Bergen and Dave Lowe. We now have 22 committees in the Bar Association.

We also teamed with the Lake County Bar to attend a Captains Game on August 2, 2017. We have received the Officer's Club which has large screens so we don't miss the Tribe Game (more information to follow).

Anyone see Bob Wantz or Joe Svete around the courts? These guys have been practicing for over 50 years each (with all that practice one would think they would have figured it out by now). I see Bob all the time in Municipal Court. He even tried a jury trial—and won—well past his 80th birthday! Joe is still active with his firm and the Bar Association. We appreciate all the hard work and dedication to the Bar. We love Bob's dedication to the Bar too—just a different kind of Bar.

By the way, does anyone recognize the name, Lauren Davis? She is a professional tennis player and Joe Svete's granddaughter. She just played in the French Open and was seeded 26. She is ranked 27th in the world. Unbelievable!!

Anyone interested in going to the Captains Game, volunteering for the legal clinic or chairing a committee, please call our new and awesome Executive Secretary, Krystal Thompson, at 440-286-7160.

Ground Flaxseed Muffin in a Mug

Ann D'Amico

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With so many of us trying to stay healthy and increase fiber intake, I wanted to share a recipe which does both. Super quick and simple for breakfast!

In a coffee mug combine:

- ¼ cup ground milled flaxseed (do not use whole flaxseeds)
- 1 egg
- ¼ teaspoon baking powder
- 1 tablespoon of banana, apple sauce or vegetable oil (I like banana—it gives it a little sweetness)

Stir the ingredients inside the mug vigorously with a fork.

Microwave on high one minute to 1 minute 45 seconds depending on your microwave's wattage.

Carefully remove mug from microwave—it will be hot. Flip mug over and muffin will pop out. Let cool and then eat. I usually eat half and save the other half for the next day. Enjoy!

Practice Tips: Hearsay: Evidence Rule 801-807

Barbara Powell

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Today's practice tip: An out of court statement offered to prove the truth of the statement is hearsay. *See* Evid. R. 801 (C). While generally not admissible, out of court statements may be admissible under some circumstances. *See* Evid. R. 801-807.

Evidentiary rulings are made in the trial court's sound discretion. *See State v. Vanhorn,* 11th Dist. Ashtabula No. 2016-A-0025, 2017-Ohio-704, ¶ 22.

Out of court statements may or may not be excluded as hearsay. Out of court statements offered as a party opponent's admission or to impeach a testifying witness are not hearsay. *See* Evid. R. 801(D). Out of court statements offered for a purpose other than proving the truth of the matter asserted are not hearsay. *See* Evid. R. 801(C). Limiting instructions are sometimes necessary.

Out of court statements admissible due to a hearsay rule exception are not excluded. *See* Evid.R. 401 and 801-807. Regardless of declarant availability, admissible out of court hearsay statements include: present sense impressions, excited utterances, statements of then existing, mental, emotional, or physical condition, and those made for purposes of medical diagnosis or treatment. *See* Evid. R. 803(1-4).

When the declarant is unavailable, admissible out of court hearsay statements include former testimony and statements against interest. *See* Evid. R. 804.

Hearsay issues arise in a variety of circumstances. For example in cases involving:

Children. Guardian ad litem ("GAL") and certain other investigative reports may contain hearsay. GALs and investigators may interview non-parties and rely on their comments, beliefs, and concerns in a report to the court. *See* Sup. R. 48(D)(13); 3109.04(F)(2)(e); Civ.R. 75(D); G.C.R. 11.H. The trial court may consider the report if the GAL or other investigator is available for cross-examination. *See In re Hoffman*, 97 Ohio St. 3d 92, 2002-Ohio-5368, 776 N.E.2d 485, ¶ 25; R.C. 2151.414(C); 3109.04(C). *See also* Evid.R. 807 (Child Statements in Abuse Cases).

Satellite images. A party's testimony relating to information received from the Google Maps application on a cell phone is not hearsay. *See Dickerson v. Miller's TLC, Inc*., 8th Dist. No. 96995, 2012 -Ohio-2493, ¶¶ 12-19.

Text messages. Text messages to a third party may be admitted as excited utterances. *See State v. Young*, 8th Dist. No. 103551, 2016-Ohio-7477, ¶¶ 20-27. They may also be admitted as non-hearsay admissions by a party-opponent or to give context to actions. *See State v. Hinkston*, 1st Dist. Hamilton Nos. C-140448, C-140449, 2015-Ohio-3851, ¶¶ 14-19; *State v. Bickerstaff*, 11th Dist. Ashtabula No. 2014-A-0054, 2015-Ohio-4014, ¶¶ 14-20; *State v. Roseberry*, 197 Ohio App. 3d 256, 2011-Ohio-5921 967 N.E.2d 233, ¶ 73 (8th Dist.).

Test your knowledge.

Q. True or false: A telephone company record custodian's testimony may establish incriminating text messages were sent from a cellular telephone connected to defendant.

True. *See State v. Blake*, 12th Dist. Butler No. CA2011-07-130, 2012-Ohio-3124,¶¶ 24-32.

Q. True or false: Certified government records are hearsay if intended to show the content's truth.

True. However, certified government records, gener-

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The Classic Metaphyseal Lesions Myth in Child Abuse Prosecutions: Time for Law Enforcement to Challenge the Treating Doctors Before Pursuing Charges

Joseph R. (Randy) Klammer

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Soon we will see that the urban legend of radiographic evidence of child abuse proven just that—nothing but legend. Since 1946—and more so since 1986—the pediatric and radiological medical community has been taught and come to believe as gospel that there are certain fractures in children that are pathognomonic of child abuse. Described as a bucket handle or corner fracture because of how they allegedly appear on x-ray films, pediatricians, radiologist, nurses, police officers, prosecutors, judges and social workers are taught that these fractures are highly suspicious of child abuse. These alleged fractures have become known as "classic metaphyseal legions" or "CML," a phrase coined by Dr. Paul Kleinman in his 1986 article "The Metaphyseal Lesion in Abused Infants: A Radiologic-histopathologic Study." AJR 196; 146:895-905.

For at least the past two decades though, this assumption has routinely been challenged. And with the advent of better and more available bone imagining tools, the evidence is proving that not only are these alleged fractures not evidence of abuse—but they are not, in reality, fractures at all.

Sadly though, the CML legend remains the medical standard. So at best, the issue becomes a battle of experts. Unfortunately for the criminal defendant—often an honest loving parent—the cost to identify and acquire the various medical experts can amount to tens of thousands of dollars. And, a typical criminal defense lawyer may be undereducated on the topic so much so as to not know what medical evidence to have evaluated and by which medical specialty. These fracture cases involve, at a minimum, adult and pediatric genetics, pediatrics, radiology, bone specialists and histopathology—not to mention the lab testing and additional radiology that is necessary to design a sophisticated defense. And, without that understanding, often the criminal defense lawyer may not request from the Court funds for the appropriate expert consultants and witnesses.

The government though has the treating doctors as their experts at no cost to prosecute felonious assault and felony child endangering charges. This expert testimony generally goes unchallenged by the police investigators. Even worse, the parent will not have had the opportunity to review the medical records, identify experts and obtain medical expert reports until well after having been publicly accused and charged criminally of abusing a child.

Even if criminal charges are not filed, the government typically petitions the Court for a finding of abuse. Ohio has Section 2151.031 of the Ohio Revised Code. That provision, like most states, allows an inference that a child was abused where the parents cannot provide an explanation for the injuries.

A very typical child fracture case comes to the attention of law enforcement when parents self-report the child to a pediatrician or emergency department with some apparent injury or difficulty a child seems to be experiencing. The child generally has no external evidence of injury or abuse, e.g. no bruising, swelling, or scrapes. There is almost always no witness to any actual abuse. With the routine examination or x-ray, multiple alleged fractures are identified and the child is immediately placed in protective care.

The parents are shocked and heartbroken to hear the diagnosis of multiple fractures. The shock is matched by their confu-

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Myth (from page 5)

sion. They are immediately subject to questioning by law enforcement. They often do not understanding that the officers are investigating them as suspects of the alleged abuse. When the parents have no explanation for the alleged fractures, the investigators immediately presume abuse as there was no other reasonable explanation for the fractures offered by parents. Never though do the doctors, nurse or police officers explain that there is debate among medical professionals as to whether these bucket handle and corner fractures actually exists.

Ignoring, for the moment, how complicated is the growth of young bone, the suspicion that healthy and happy parents would cause such abuse is unique to only these child fracture cases. It is sadly though the heart of the problem with such cases. As Dr. James LeFanu wrote that "[t]he diagnosis of fractures must be highly improbable in the absence of the relevant clinical signs of injury. It seems highly improbable that a small baby who has allegedly been the victim of repetitive physical assault should nonetheless appear well with no physical stigma of injury such as bruises or soft tissue injury other than the presenting injury." LeFanu, James, M.D., The Misdiagnosis of Metaphyseal Fractures: A Possible Cause of Wrongful Accusations of Child Abuse, Nov. 25, 2009. The finding of abuse in such cases is saying only that the parents are, in the words of Dr. Marvin Miller, "deceptive parents who have maliciously designed a way of repeatedly injuring the bones of their child without leaving any telltale traces of injury to the skin." Miller, Marvin, MD, The Lesson of Temporary Brittle Bone Disease: All Bones are Not Created Equal, Bone 33 (2003) 466.

Why then is this the accepted belief among doctors, nurses, social workers, prosecutors, police officers and judges? In 1995, Dr. Paul Kleinman conducted a study of just 31 deceased infants to in essence prove his 1986 findings. It appears though there is little more to support his findings other than this 1995 article "Inflicted Skeletal Injury: A Post-Mortem Radiologic- histopathological Study in 31 Infants." AJR 1995; 165:647-650. Until recently, there was no comprehensive evaluation of any and all research supporting these CML assumptions.

In 2014, radiologist Dr. David Ayoub, pediatrician Dr. Charles Hyman, histopathologist Dr. Marta Cohen, and pediatric geneticist, Dr. Marin Miller, engaged in a study to "review the hypothesis that classic metaphyseal lesions represent traumatic changes in abused infants and compare these lesions with healing rickets." Ayoub, et al. A Critical Review of the Classic Metaphyseal Lesion: Traumatic or Metabolic?; AJR 202, January 2014. The authors researched the National Library of Medicine for articles addressing the subject of the CML. There were only nine studies in the peer reviewed literature on the subject—they were published between 1986 and 1998 by the same principal investigator, Dr. Paul Kleinman. This is the same Dr. Paul Kleinman who coined the phrase "classic metaphyseal lesion."

The review of Dr. Kleinman's research found that it suffered from a number of defects:

1. There was no control group that tested the prevalence of the metaphyseal lesion in non-abused children.
2. There was little evidence to confirm that there was actual abuse so as to confirm the CML finding was related to abuse. These were not "witnessed abuse" cases.
3. The findings have not been independently replicated in peer-reviewed literature.
4. Pediatricians and radiologists are taught that these fractures are caused by violent whipping of the child. The CML is allegedly a fracture parallel to the chondro-osseous junction—where the bone meets the cartilage. Which is not consistent with the "violent shaking as the infant is held by the trunk and extremities" that Dr. Kleinman proposes to cause the parallel injury.
5. There is typically no evidence of bleeding near the fracture, which is an area that is extremely vascular because of it's role in bone growth.
6. The radiographic depiction of these CMLs arguably resembles the irregular thickening of the perichondrial ring. That ring surrounds the end of growing bone to provide it protection and support. If the

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Myth (from page 6)

bone grows irregularly, this perichondrial ring can give the impression of a bucket or corner fracture where the diaphysis meets the metaphysis and epiphysis.

7. Last and most important, modern CT and MRI technology is now available to test current x-ray findings—but not available to test old x -ray findings. We cannot go back to old patients and conduct CT and MRI on the patient. When comparing suspicions of fractures based on x-rays to CT scans of the same bone, radiologist are learning that what was suspected as a fracture is instead a bone irregularity or the thickening of the perichondrial ring.

Remember that understanding the radiographic tools to diagnose these fractures is critical to understanding the reliability of the findings of the radiologist. These are ultimately questions of the mineralization of the bone as mineralization is crucial to bone strength. It is well settled that there must be a loss of bone mineralization of some 20-30% before the demineralization can be detected on a simple x-ray. Hence, with the prevalence of these better imaging technologies, we have a new opportunity to test comparisons between x-ray finds and CT or MRI findings. We do though need a commitment to conduct this research and record the findings as doctors are treating suspicions of abuse in their day to day practices. Without that commitment, we risk losing critical evidence to support findings of past wrongful convictions for child abuse.

With that, Drs. Ayoub, Hyman, Cohen and Miller conclude that the decades old presumption that a CML is indicate of abuse "is poorly supported." They recommend that "[u]ntil classic metaphyseal lesions are experimentally replicated and independently validated, their traumatic origin remains unsubstantiated." Interestingly, one frequent expert witness for the government reported to this writer the preliminary results of his recent study. He described his "witnessed abuse study"—meaning cases where injured children came to the clinic with actual witnesses of abuse. The radiological evaluation of these witnessed abuse patients in his study was not proving to show classic metaphyseal lesions in these patients.

This is nothing new in abuse medicine. The criminal justice system experienced the same medical presumptions with Shaken Baby Syndrome; parents were convicted and imprisoned only for the system to discover later the fallacy of the SBS diagnosis.

On a daily basis there are loving parents accused of injuring a child without any external evidence of injury or witness to abuse. Not only are families torn apart, but the accused parent is convicted and imprisoned for considerable periods. As Drs. Ayoub, Hyman, Cohen and Miller suggest we must remain suspicious of the suggestion that these lesions have a traumatic origin.

Hearsay (from page 5)

ally, are admissible hearsay. *See Hirsi v. Davis Creek Auto Sales*, 10th Dist. Franklin No. 15AP-415, 2016-Ohio-756, ¶ 49; Evid.R. 803(8).

Q. True or false: When a statement is offered to explain a party's conduct, the hearsay rules prohibit any use of the statement.

False. *See State v. Scott*, 10th Dist. Franklin No. 05AP-1144, 2006-Ohio-4981, ¶ 15.

Transforming American Democracy One Step at a Time: Law Day 2017

Lisa Carey

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More than 100 Judges, Magistrates, Bar members, Law Enforcement, Essay Winners and families and invited guests packed into Guido's in Chesterland on April 28, 2017, for the annual Law Day luncheon and celebration. With the theme revolving around the 14th Amendment's transformation of American law and society, those in attendance were treated to thought-provoking essays written by Geauga County high school students, the honoring of the Law Enforcement Officer of the Year, and a program concerning the Ohio Innocence Project.

The law firm of Petersen & Petersen sponsored and coordinated the essay contest this year. After choosing from a number of submitted essays, the winners were announced as:

- 1st Place – Haleigh Gundy, Hawken Upper School
- 2nd Place – Adam Retych, Home Educated
- 3rd Place – Makenna Venaleck, Hershey Montessori School

The winning essays are published in this issue, and each of these students took the theme to task and wrote thoughtful and discussion-generating essays, which you are encouraged to read.

As he has done for many years, Jim Gillette proceeded to announce the Officer of the Year for 2017. Kurt Dreger, a Detective Sergeant with the Bainbridge Township Police Department, was this year's recipient. Bainbridge Township Police Chief Jon Bokovitz introduced Detective Sergeant Dreger as a 25-year member of their force as well as an officer who had been selected to attend the FBI National Academy. As a part of the Academy, he developed a plan to disband the dispatch center and use the Geauga County Sheriff's Department's dispatch - a change that saved hundreds of thousands of dollars and allowed the department to hire additional police officers. In addition to overseeing the dispatch change, Officer Dreger was also in charge of running the Township's Detective Bureau where he worked with other officers to make numerous arrests for burglaries, arson and other felony cases.

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Officer Dreger said he was fortunate to have not only the support of the community, but to also work in a department which has the tools, resources, and manpower to get the job done and keep the community safe. He thanked his parents, wife, and three sons for their support and said he was blessed to go to work everyday in Bainbridge with his hard-working colleagues.

The last speakers in the program provided a fascinating look into the work of the Ohio Innocence Project. Donald Caster, Clinical Professor of Law in the Ohio Innocence Project, said the project was started at the University of Cincinnati College of Law in 2003 to identify situations where innocent people are convicted of crimes and then work to bring their cases to light. Over 8,000 inmates have written to the project proclaiming his or her innocence but only 30-40 cases have actually gone to Court. Once a case is selected from the application process, approximately 15-20 law students carry the bulk of the workload on these cases by getting all of the information on the files, obtaining public records, and contacting witnesses.

Professor Caster then introduced Nancy Smith, who was convicted of molesting children while working as a bus driver for the Lorain County Head Start Program in 1994. The children had alleged that on certain days, Ms. Smith did not drive them to school but took them to different locations where she and her co-defendant, Joseph Allen, molested them. After a lengthy jury trial, Ms. Smith was convicted of all of the counts brought against her and sentenced to 30-90 years in prison.

Once convicted and sent to prison, Ms. Smith, then mother of four and now grandmother of 8, said it was a very emotional time for her—"I was in prison and innocent—who was going to help me?" She wrote to the Ohio Innocence Project who took on her case in spite of the fact that there was no DNA evidence that could be challenged. Her case rested more on the unreliability of the childrens' statements and the influence of their parents on the children when the statements were made and during a lineup video that was not shown at the original trial. While lawyers and student fellows from the Ohio Innocence Project worked diligently behind the scenes for several years, it was not until 2009—after serving 15 years in prison—that Ms. Smith returned to Court and was acquitted by Judge Burge of the Lorain County Common Pleas Court.

Ms. Smith's battle is not over, however. The Lorain County Prosecutor appealed the case, which ultimately resulted, in 2013, in a re-sentencing agreement, meaning that her guilty verdict still stands, but she will not spend anymore time in jail. She has applied for a full pardon and told the audience that her pardon is sitting on the governor's desk. "There really are innocent people in prison. It just takes one person to take that person seriously. There are many still sitting in prison just hoping they get the chance I was given," she said. Professor Caster said Nancy's case illustrates one of the problems they frequently encounter - there are no constitutional protections for the wrongfully convicted. "No one wants to be a part of a wrongful conviction. Nancy was convicted of a crime that never occurred," he said.

The Ohio Innocence Project is the primary component of the Rosenthal Institute for Justice which was established at the University of Cincinnati College of Law by a significant donation from Lois and Richard Rosenthal. The Project is funded by gifts donated through the UC Foundation.

Law Day Student Essay: Law Day 2017

Hayleigh Gundy,

Hawken Upper School, 1st Place Student Essay

"If you and another student get into a fight on school property and the principal wants to suspend/expel you, what are your rights?"

The due process clause within Section One of the Fourteenth Amendment states that "no state shall...deprive any person of life, liberty, or property, without due process of law." The instances of student suspension and expulsion falls under the jurisdiction of this clause, as it questions the abilities of the state to remove the federally-recognized right to a public education. Though the clause does not include specific guidelines for what policies a public school may hold in regard to suspension/expulsion, it does dictate the ability to which a school may enforce these rules by establishing a standard through which said policies are executed in a fair manner towards its students. Overall, the manner in which this clause is interpreted with regards to suspensions/ expulsions is to guarantee a right to notice and a fair hearing before the application of any such punishments to provide a clear reasoning for why the students are deserving of these punishments, specifically in the context of school's policies. This cause also provides students with an opportunity to bring evidence on their behalf to potentially overturn the punishment recommended by the school. Thus, the Fourteenth Amendment is crucial to both ensure that punishments are carried out in a just manner and to protect the rights of students as they would be in a court of law.

In the case of student suspension and expulsion, the court case Goss v. Lopez in 1985 interpreted the Fourteenth Amendment's doctrine of due process in public schools, particularly involving Constitutional rights and how they applied to students. In the case, students from Columbus, Ohio has been suspended from school under Ohio Law Sec. 3313.66. State law also held that students only had the right to petition against their punishment if they were expelled, not suspended, which struck the students as unfair. Such a severe punishment, they believed, necessitated due process before being applied. The case was brought over whether this suspension without the right to petition or hearing was a violation of the students' Fourteenth Amendment rights. The court ruled in favor of the students, and made several important decisions on the application of the Fourteenth Amendment within schools. The court first established education as an entitlement and a property interest protected under the due process clause of the Fourteenth Amendment. The court additionally decided the application of this ruling—that students' due process rights extended to the classroom, and major disciplinary actions out to be treated in the same way as state and federal law violations, in order to ensure that the deprivation of an entitlement is fully justified. The way this has been interpreted within public schools has been give the student fair notice of their violation and to hold a formal, private hearing for the student in question, wherein the student has the right to know which specific rules they are considered to have violated, bring legal counsel and present evidence on their behalf, as well as have the decision regarding their suspension/expulsion decided by an impartial panel. In the provided situation, if a student were to get into a fight with their principal wished to suspend/expel them, they would have the right to this application of due process under the Fourteenth Amendment, as established by Goss v. Lopez. In other words, they would be given fair notice, the right to an impartial hearing, and the opportunity to provide evidence in their defense, to ensure that punishment is as fair as possible. Thus, the due process clause is essential to ensuring that major disciplinary actions were executed fairly and that the justice of the US judicial system is consistent across all state institutions.

There are very minimal

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Law Day Student Essay: Preserving Priceless Principles

Adam Retych,
Home Schooled, 2nd Place Student Essay

In the effort to nullify the South's abrasive assault on human rights and further the principles exhibited in the Declaration of Independence, the inspired and insightful language presented in John Armor Bingham's 1868 Fourteenth Amendment sought to promote and ensure the equality of man and the extension of the Bill of Rights. Being based on the simple premise that all men are created equal, this notable piece of legislation has stood the test of time as a fundamental landmark in the civil rights movement. However, what makes the Fourteenth Amendment so unprecedented? From its quintessential Due Process Clause and Equal Protection Clause to the immortal and immutable Privileges and Immunities Clause, the Fourteenth Amendment has been at the forefront for the preservation of natural rights and the protection of indispensable societal values.

Reiterating the proficient precepts of the Fifth Amendment, the Due Process Clause of the Fourteenth Amendment prescribes the actions by which government must follow when forced to seize life, liberty, or property. Bingham's nonpareil newly amended law extended privileges concisely articulated in the Bill of Rights to individual state enforcement. Whether through substantive due process or procedural due process, this vital piece of legislation prohibits government infringement on human rights in enforcing laws, criminal prosecution, and the adjudication procedure. Fundamentally, under the Fourteenth Amendment's Due Process Clause, American citizens are entitled to a grand jury, to not be twice jeopardized in court, to not be compelled to witness against himself, and to receive sufficient compensation for government requisitioning of private property. Today we can attribute much of the impartiality and proficiency of our Nation's pillar of justice to the vital Due Process Clause.

As the famous Preamble of the Declaration of Independence irrevocably states, "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." Implemented to reconcile the antebellum South to these unifying words, the Fourteenth Amendment's Equal Protection Clause and Privileges and Immunities Clause were carefully crafted to reconstruct Southern civilization through reinforcing social and economic equality. Penned under the premise that all men are equal, the Equal Protection Clause clarifies a state's responsibility to entitle all persons within its jurisdiction equal protection under its laws. Consequently, the Privileges and Immunities Clause relates to the supremacy of federal citizenship over state citizenship. The architects of both the Constitution and the Fourteenth Amendment understood that in order to preserve the Union privileges and immunities must be ubiquitously endowed to all citizens on a federal level. Although the Reconstruction era's intentions have been surpassed with the emancipation of the slaves, the Fourteenth Amendment's Equal Protection Clause and Privileges and Immunities Clause are needed more than ever in the fight for societal equality and national unity.

The proficiency of justice. The protection of equality. The preservation of endowed rights. In any constitutional republic, these crucial features are necessary in the incessant struggle to defend the vital precepts of life, liberty and the pursuit of happiness. Soundly grounded in the ideologies of the Declaration of Independence and natural law, the Fourteenth Amendment is the manifestation of the Founder's ideology that due process, equality, and citizenship are human rights. However, this unprecedented piece of legislation is useless without correct interpretation and fervent application. Truly, as free American citizens, it is our

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Law Day Student Essay

Makenna Venaleck,

Hershey Montessori School, 3rd Place Student Essay

The world has changed immensely in the past few hundred years, and the United States has changed along with it. The Constitution was written over 200 years ago and, as per usual, much has changed in the way the world works since then. The 14th amendment was ratified in 1868; the first year that celebrated Memorial Day, and the last year public hanging was legal in England. Times were obviously different back then, and the intentions of Amendments to the Constitution have come into question in the present day when considering how these antique clauses affect our modern life. One specific clause in the 14th Amendment states: "all persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside." In modern day, this is often part of the Constitution that is looked at when deciding a verdict on immigration issues. However, post-Civil War reforms focused on injustices to African Americans, whose rights were being denied as recently-freed slaves, and was written in a manner to prevent state governments from ever denying citizenship to individuals in this group who were born in the United States. In 1868, the United States had no formal immigration policy and did not limit immigration. Thus, there were no illegal immigrants or "anchor babies" so to think about writing the Amendment. What is an anchor baby? The modern term refers to children who are born in the United States to illegal immigrant parents. They are called "anchor babies" because the common belief—that developed after the 1965 immigration act—is that they pull their families into unjustified U.S. citizenship and keep them in the country like an anchor. The reality is that anchor babies don't provide many benefits to their parents from the side politicians like to look at. People come into the United States to give birth so their child can have a better life than they would in the country they left behind, not to gain fast and easy citizenship. In fact, there are so many strings attached to anchor babies' power to help their parents that many don't receive citizenship or are even sent back to their home country regardless. The power and justification of anchor babies is an entirely separate debate that comes down to single clauses and technicalities, just like the debate over the 14th Amendment. Many people say that the 14th Amendment alloes for birthright citizenship, but does not require it, which is a subtle, but important point. If the constitution does not require birthright citizenship, Congress might be able to change the law without having to pass a Constitutional amendment, which is an arduous process. The interpretation can make the process of changing this specific law dramatically easier or harder depending on which side is taken as fact. The gist of the argument lies on the fact that the 14th Amendment requires people to be born on U.S. soil and be "subject of the jurisdiction thereof" to receive citizenship at birth. Some people interpret the inclusion of "jurisdiction" as requiring mutual consent for citizenship. If they are here illegally and the United States do not agree their child should be eligible for citizenship, Congress could say no, rendering the 14th Amendment inapplicable to these children, without violating the constitution. The moral debate of whether these children should be guaranteed citizenship does not lie within the 14th Amendment—there is only room for speculation of what was intended and what can be carried over into modern day. There is no doubt that the amendment was a cornerstone in U.S. policy and placed the 1st Amendment into law, but the one debate that cannot be argued is that the nation—and the entire world—has changed immensely since the amendments ratification. Because we are using antique clauses for modern situations, things are left up to interpretation and speculation. One would not try to send an email through pigeon mail so why are we operating an antique reform whose relevance is decided through conjecture?

1st Place (from page 10)

case in which this doctrine would not apply exactly as described. In order to provide a safe school environment, the potential of endangering other students or themselves can lead to a student's immediate suspension for ten days without hearing, although a hearing would be provided as soon as possible. In the scenario provided, if a student who has been in a fight is believed to be violent to the point that allowing them to remain in school would likely cause harm to students, their due process rights may be delayed. However, despite the severity of the student's actions, their right to due process is never completely denied, and would be provided as soon as possible.

In conclusion, if a student is to get into a fight on school property or violate any other school rule that would necessitate suspension/expulsion, they have the right to fair notice and a hearing as established under Goss v. Lopez. In conclusion, as the Supreme Court viewed in case, the fair application of the Fourteenth Amendment "could be not taken away for misconduct without adherence to the minimum procedures required [due process]."

2nd Place (from page 11)

calling to understand and uphold the Fourteenth Amendment's auspicious legacy of preserving priceless principles.

Works Cited

Forte, David, and Ronald Rotunda. "Privileges and Immunities Clause." *The Heritage Guide to The Constitution*, The Heritage Foundation, www.heritage.org/constitution/#!/articles/4/essays/122/privileges-and-immunities-clause.

Smolin, David. "Equal Protection." *The Heritage Guide to The Constitution*, The Heritage Foundation, www.heritage.org/constitution/#!/amendments/14/essays/171/equal-protection.

Concerns About Budget Bill

Sharon C. Gingerich

Geauga County Recorder,

SGingerich@CO.GEAUGA.OH.US

Currently, there is legislation in the Ohio Senate to increase the recording fees by a significant amount. If it passes, the recording fee for deeds will go from $28.00/$8.00 to a predicted fee of $70.00, and mortgages will go from $28.00/$8.00 to a predicted fee of $200.00. Marginal references are set to go from $4.00 to $10.00. If the bill is signed by the governor, there will be a 90-day notification period for the fee increases to be effective. I would suggest keeping an eye on the budget bill in case this does pass.

Law Day 2017

Faces in the Crowd

Kurt Dreger

Officer of the Year 2017

Bainbridge Township Police Department

Thank You All For

Your Service To Our County

Announcements

Scott M. Kuboff joined the law firm of Petersen & Ibold in 2017 with over nine years of litigation experience in trial and appellate courts throughout the State of Ohio, the Northern District of Ohio, and Sixth Circuit Court of Appeals.

Mr. Kuboff's practice includes representing individuals in personal injury claims, advising small business owners, litigating business and contractual disputes, defending individuals charged with criminal offenses, and advocating for clients in family law matters.

In 2016 and 2017, Mr. Kuboff was selected to the Super Lawyers "Rising Stars" list for Ohio. Mr. Kuboff has earned a "Superb" rating by Avvo, which is determined by a combination of experience and peer submitted reviews.

Mr. Kuboff attended the University of Toledo where he earned a Bachelor's of business Administration in 2004, graduating *cum laude* and with College honors. Mr. Kuboff eared his Juris Doctorate from Cleveland-Marshall College of Law in 2007 where he was the President of the Student Bar Association and a member of the Moot Court Board of Governors.

Mr. Kuboff is a member of the Ohio State Bar Association and the William K. Thomas American Inn of Court. Mr. Kuboff is an active participate in the Cleveland Marshall Law Alumni Association's First Year Mentor Program as well as programs and clinics offered by the Legal Aid Society of Greater Cleveland.

Mr. Kuboff is married and resides in University Heights, Ohio, with his wife, Teri, and their two sons. He is actively involved in USA Cycling, Bike Cleveland, and is a founder of North Coast Cycling, a northeast Ohio amateur cycling team.

Cases of Interest

Pearce Leary

Pearce Leary, Esq.,
pearceleary@windstream.net

State vs. Wilson, 2016-Ohio-7650

Trial court requires defendant, who was convicted of theft in office, to forfeit her entire monthly retirement check and to obtain employment in order to make restitution. Full restitution is statutorily mandated. Court need not hold a hearing on defendant's ability to work when PSI report contains information on age, health, education and work history.

Xtreme Elements, LLC vs. Foti Contracting, LLC, 2017-Ohio-254

Held: when a contractor withholds money from a subcontractor under a good faith belief that the subcontractor's work is deficient, prejudgment interest under the Prompt Payment Act is not warranted even if, after trial, the trial court determines that the subcontractor's work is not deficient.

Entech Ltd. vs. Geauga Cty. Court of Common Pleas, 2017-Ohio-503

In divorce proceeding, wife seeks discovery of information from husband's employer that is proprietary and subject to nondisclosure agreements. Trial court appointed special master for discovery who requested husband submit to deposition to testify regarding "protected" information. Husband refused. Employer filed writ of prohibition. Held: denied. If husband believes he is being required to breach certain agreements, he has several potential remedies to prevent requiring disclosure, including seeking a protective order, defending a contempt motion for failure to disclose, seeking an appeal from a contempt order, and appealing discovery issues.

Portage Cty. Bd. of Dev. Disabilities vs. Portage Cty. Educators' Assn. for Dev. Disabilities, 2017-Ohio-888

Eleventh District overrules its prior decisions which held that standard of review in arbitration appeals is for an abuse of discretion. Instead, the trial court's decision is to be renewed de novo to determine whether any of the limited grounds contained in R.C. 2711.10 exist.

Hats Off!

Congratulations to Geauga County Bar Association member, **PATRICIA J. SCHRAFF**, who was awarded the 2017 Ruth A. Densmore Senior Advocate Award by the Lake County Council on Aging during the Annual Meeting and Volunteer Recognition Program on May 11, 2017. This award is presented annually as a tribute to Ruth to recognize an individual or organization on the basis of outstanding community involvement for the benefit within the county on behalf of Senior Citizens. Ms. Schraff is the senior partner in the law firm of Schraff & King Co., L.P.A. located at 2802 SOM Center Road, Suite 200, Willoughby Hills, Ohio 44094.

Judge Timothy J. Grendell elected as Secretary Historian of the Ohio Association of Probate Judges

June 8, 2017, Chardon—On Wednesday, Judge Timothy J. Grendell was sworn in by Chief Justice O'Connor as Secretary Historian of the Ohio Association of Probate Judges after being unanimously elected by fellow Probate Court judges across the state of Ohio. Presiding over the Geauga County Probate/Juvenile Court, Judge Grendell is responsible for administering juvenile justice and rehabilitation, issuing marriage licenses, and probating all estates filed in Geauga County.

The Ohio Association of Probate Judges (OAPJ) operates for educational and charitable purposes, and is comprised of all judges in Ohio with probate court jurisdiction. Each county in Ohio has one judge with probate court jurisdiction with the exception of Champaign, Cuyahoga, and Marion Counties which each have two judges with probate jurisdiction, and Erie County which has three.

In addition to his new position as Secretary Historian of OAPJ, Judge Grendell also serves as the Vice President of the Ohio Association of Juvenile Court Judges (OAJCJ), is a member of the Ohio Judicial Conference Executive Board, and is the Presiding Judge of the Geauga County Common Pleas Court.

"I am honored to be called to serve as Secretary Historian of the Ohio Association of Probate Judges, and appreciate the confidence my colleagues have demonstrated in my dedication to maintaining public respect for the judiciary by ensuring that estates are administered swiftly and appropriately, the county's elderly and indigent residents are cared for, and our park lands are kept in good hands," said Judge Grendell.

Judge Grendell's career in law began as a Captain in the United States Army, where he was assigned to the Judge Advocate General (JAG) Office for the 2nd Armored Division at Fort Hood, TX. He then practiced law privately for over 25 years and served as a member of the Ohio House of Representatives from 2000-2004, and the Ohio Senate from 2005-2011. Since his appointment to the Geauga County Probate/Juvenile Court in 2011, Judge Grendell was re-elected to an additional six-year term in 2014.

Thank you to all of the members of the Geauga County Bar Association for your support after our house fire! We are now successfully moved (back) into our new home!—Robin Stanley, Editor

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Chagrin Falls, Ohio 44023

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- Bring important papers with you!
- Questions? Call 888-817-3777; visit **www.lasclev.org**

***Attorneys are available for brief advice and referral only.**
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Who will make your health care decisions if you are not able? Do you have Advance Directives in place?

Join us for an informative free program to consider and make your plan

Presented by the Geauga County Bar Association & Hospice of the Western Reserve

Tuesday Sept. 12 at the Chardon Senior Center 12:30 – 1:30 p.m.

• Signing on Sept. 19 from 12:30 – 1:30 p.m.

OR

Tuesday Oct. 17 at the West Geauga Senior Center 12:30 – 1:30 p.m.

• Signing on Oct. 24 from 12:30 – 1:30 p.m.

The Geauga County Bar Association Advance Directives Committee and Hospice of the Western Reserve will present information and answer questions regarding health care powers of attorney and living wills at the first scheduled meeting. They will distribute the standard forms and return the following week with attorneys from the Geauga Bar, who will help you complete the forms and notarize them. This will allow you time to think about what you personally want and who you would want speaking on your behalf if you can't.

Geauga County Department on Aging

Geauga County Bar Association
www.geaugabar.org

Contact Jennifer Peck, Committee Chair, at jpeck@ssandplaw.com

HOSPICE OF THE WESTERN RESERVE

The Geauga County Bar Association presents
The Annual Secretaries Day Event
"An Afternoon Tea"

Wednesday, June 28th from noon-1:30 pm
Munson Town Hall (12210 Auburn Rd. Munson Twp)

Lunch will include:

**Choice of 2 quiches – ham, bacon & cheddar or veggie with spinach, peppers, onion, cheddar and parmesan cheese*
**Orange walnut chicken salad croissant sandwiches, Black Forest Ham wraps (includes gluten free)*
**Caesar salad, Spring mix salad with berries, pecan & vinaigrette, fresh fruit salad*
**Olive & pickle tray*
**Desserts of mini carrot cake bites, Kahlua brownie bites, peanut butter bar bites and cheesecake bites!*
Lunch includes coffee, tea & bottled water

There will be games and door prizes, with winners of additional prizes for the best item that you wear that begins with the letter "T"

Detach this portion and mail with a check made payable to GCBA to Krystal Thompson at:
Geauga County Bar Association
P.O. Box 750, Chardon, OH 44024
by ***Friday, June 23rd***

Name: _____

_____ *# Attorneys/Judges Attending* _____ *# Secretaries Attending*

The cost is $30 per person.

Geauga County Bar Association

Announcements

Website:
Check out the Geauga County Bar Association Website for updated meeting dates, deadlines, and other important information at **www.geaugabar.org**

Secretaries Day: June 28 at 12:00-1:30 p.m. at Munson Town Hall

Upcoming Executive Committee Meetings

Second Wednesday of each month at 12:00 noon
Next Meetings:
July 12 at Square Bistro
R.S.V.P. to the G.C.B.A. Secretary

Upcoming General Meetings

Fourth Wednesday of each month at 12:00 noon
At Bass Lake Tavern
July 26
R.S.V.P. to the G.C.B.A. Secretary

Welcome to the New G.C.B.A. Members

Christopher Carney of Klein & Carney, Co., LPA
Rachel Kabb-Effron of Kabb Law Firm
Howard Strain of Legal Aid Society of Cleveland
Crystal Welsh of Kabb Law Firm

CLE Announcements

August 25, 2017: Probate Seminar
Case Law Update, Estate Assets, Creditors' Rights, Spousal Rights

Dec. 7, 2017:
Retirement Planning for Attorneys
Professional Conduct Credits

More information & Seminars to come!

Geauga County Bar Association

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Ipso Jure Deadlines:

Mark your calendars and turn in an article!

July 15, 2017

September 15, 2017

Secretaries Day:

June 28, 2017 12:00-1:30 p.m.

Munson Town Hall

Quick Reminders

Next Executive Committee Meeting:

July 12 at 12:00 noon at Square Bistro

Next General Meetings:

July 26 at 12:00

Bass Lake Tavern

We hope to see you at the Bar Association's next event!