

the Briefs

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July 2014
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Advertising – 10th of the month prior to the month of publication

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President's Message

July 2014



Nicholas A. Shannin, Esq.

Interconnectivity

Those who were at the Bar Investiture in May, freely skip the message – it's a rerun of the post-introduction portion of my speech. But if you didn't, and want to understand the link between all the "President's Messages" to come this year, read on...

Seven syllables:

Interconnectivity.

One word, vast meaning.

the thing is, each area isn't really separate from the others. Depending on the case, a good family lawyer knows the need to be able to bring in a skilled property lawyer;

a tax lawyer; a probate lawyer; a criminal lawyer; or maybe, just maybe, an appellate lawyer. All of these committees need to find, then, the connections with each other that will only serve to strengthen us all.

So I want everyone in our bar to know first who's in their niche area – and secondly, what our other niche areas are and how to contact those members, too. We need to encourage collaboration, and we need to promote our committees so that everyone will know where to turn when they have a need outside of their individual expertise.

Another way to improve our interconnectivity is through our membership directory. For how many of you was the last time you used your directory four years ago, when we last had a printed directory? Go ahead, don't be shy – I'm with you too. The printed directory was often out-of-date and impossible to update. Online, it was easy to update, always accurate – but required online access and your OCBA password. Any delay is a bad delay in our Google-fast world, so many stopped using it.

Time to blow it up. My goal is to get the directory fully accessible by everyone. By you. By me. By the technophile and the technophobe. By our bar – and by the public. Why? Because when a lawyer needs to be hired for Central Florida work, it should be an Orange County Bar attorney who gets contacted. We need our referrals to stay in-house, and we need our community to look to us first. And, after the new directory is up and established, we will – eventually – look to build an app that connects our community to us and us to each other. Interconnectivity – together, we stand, and united we all get stronger.

These connections go to the core of what we do. Some business organizations are singular in focus – a dot representing social activities or networking. Other organizations, like Kiwanis, Lions, and Rotary, add a dimension by having one focus on networking, but another on service – and you can imagine a line, upon which their activities might be plotted.

What next for a bar that has accomplished so much and has so many vibrant programs already in place? Add more new programs? No. Instead, I'm going to take a page from one of my favorite shows, *Cosmos*. The greatest understanding comes from looking at the very large picture, where you see the connections that bind us all together. By studying these connections, perhaps we can then see what we can do to help make those bonds – and our bar – even stronger. With apologies to Carl Sagan, *We are all Bar Stuff*.

So the theme for my year? Well, this is what happens when you elect an appellate attorney to your helm, we of the affinity for large words. You get a theme like this: **Interconnectivity**. Let that loquacious term roll around your cerebral cortex for a moment. Simple five-syllable "connectivity" isn't enough. Connectivity happens when you pick up your old-fashioned land line and call someone. Connectivity between atoms of iron and carbon might yield a molecule of steel, but it takes interconnectivity for those steel molecules to really do something, to form a sword – or a plowshare.

Interconnectivity is the meta. It happens when the individual connections become so intertwined that the whole then becomes more than the sum of its parts. The internet is the perfect example of interconnectivity – millions of connections that become seamless to support our vast web of knowledge, information that would be inaccessible if each bit were stored only on the separated strands of individual servers.

So if we see the meta, how do we use it? How do we reach interconnectivity? By making sure that each of our members has the tools he or she needs to reach each of our other members. The first step to that: our committees. We have some ridiculously talented lawyers who are in these foundational blocks that form the backbone of our bar. Family law, business law, worker's comp – you name it, we've got a committee for it. But

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Michael M. Kest, Esq.

Passing the Professionalism Torch...

After two years as chair of the OCBA Professionalism and the Ninth Judicial Circuit Professionalism committees, I have passed the reins onto the next chair, Carrie Ann Wozniak, Esq., and co-chair, Kimberly Hosely, Esq. As my last duty I want to present the state of professionalism in the Ninth Circuit, at least from my vantage point.

During my time as chair, I had the privilege to meet and work with some of the best attorneys and judges in the Ninth Circuit through meetings, seminars, and functions. They say you learn more by teaching than you do by being taught. I think the same kind of thinking applies with respect to participating on a committee versus actually serving in a leadership position on the committee.¹

There has been a lot of talk lately about how the practice of professionalism among those in the legal profession has been getting worse. I have always been the contrarian in my family (as I am sure any of them will tell you), and I will take that role now and respectfully disagree with the Florida Bar Standing Committee on Professionalism. I have not been in the practice of law as long as most of the members of the committee. However, my experience in the seven years I have been practicing law tells me that the legal industry is on the professionalism upswing. This contradicts what you hear from the Florida Supreme Court.

I think there are a few logical reasons for this. First, the Court has the same problem that many police and prosecutors have. When I worked as a prosecutor, it seemed that everyone in Hawai'i (where I started my legal career) was driving drunk. Obviously this was not true, but I handled so many DUI cases that it couldn't help but affect my thinking. Much in the same way, the Court usually only sees the bad cases. Just as citizens do not call the police to report that someone is *following* the law (e.g., driving sober, *not* breaking into a house, *not* shooting someone, etc.), attorneys are not usually reported to the bar for acting professionally (e.g., dealing honestly with clients, being civil to opposing counsel, *not* misusing trust account funds, etc.). This is one of the reasons why recognition like the Trickett, Mathews, and Glazebrook awards, given out by this committee, are so important. They help to spotlight the more distinguished side of the bar.

The second problem the Court runs into is its sample size. The number of cases that the Court

sees is very small in relation to the overall bar and, at least in my experience, not accurately representative of the bar as a whole.

While we have all had our experiences with unprofessional attorneys, it appears – at least to this observer – that some of the rules put in place both by the state and local judiciary are beginning to have an impact.

Two perfect examples are the “meet and confer” mandates under the Ninth Judicial Circuit’s Administrative Order 2012-03 and Business Court Procedure 5.3. While the mandate certainly does not require that the issues be resolved, the simple act of picking up a phone and talking to an actual person can make a huge difference in one’s relationship with opposing counsel. Emails, faxes, and letters are an incredibly impersonal form of communication. While written communication is certainly important in many instances, when you are writing something down, it is easier to be dismissive of the other side’s position since you are only arguing with yourself. It is also much easier to be spiteful and unprofessional in a written communication for the same reason. When you actually have a conversation with someone, either over the phone or in person, you have to first acknowledge that he or she is a person and not just a concept you are yelling at or arguing against. This alone changes the entire interaction between the parties. While the “meet and confer” mandates may not settle every single issue between the parties, I’ve found that it does improve the overall discourse of a case.

Another factor that seems to be positively influencing the discourse in the bar is a renewed focus on professionalism in law school curriculum. Most law schools are now requiring a course on professional responsibility. While a single class cannot teach you everything you need to know about professionalism, putting an early emphasis on professionalism can (and I think does) have lasting effects. While I cannot speak to other schools, I know that Stetson’s PR class was only a small part of the curriculum’s emphasis on professionalism. For example, in our trial prep class the professors stressed the importance of all the “small” things like standing when addressing the court, asking to approach the bench or a witness, and trying to refrain from speaking objections. There is certainly always room for more, but the law schools seem to be moving in the right direction.

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Practical Tips on Commercial Mediation

Mediation in commercial litigation presents unique and different challenges than the typical personal injury cases with which many litigators are familiar. Commercial litigation cases often involve multiple parties, subtle but critical conflicts, and can involve much more than just money. The paramount interests of the parties may center on goodwill, market share, pressures from competition, or a host of other economic influences. Pain and suffering doesn't apply, and reputation may be everything. The practical dynamics of this area of alternative dispute resolution are explored below. In next month's ADR Committee article we will focus on the nuances of commercial litigation.

Convening the Parties

Effectively presenting issues in cases with commercial litigators depends on more than a general understanding of a client's business and may mean the difference between success and failure in resolving cases through mediation. In most commercial cases, parties are ordered to mediation or are otherwise obligated by contract to mediate before arbitrating or litigating. The mediator's first task is getting the proper parties to the table.

By and large, commercial litigation has moved outside the courthouse. Client reminders of the advantages of mediating commercial disputes include factors such as confidentiality, resolution at reduced expense, removal of uncertainty as to outcome, and less business disruption. Likewise, the need to preserve ongoing business relationships or concern about establishing an adverse industry precedent may be considered. Speedy resolution resulting in avoiding protracted litigation and appeals prove attractive to parties as well.

Should They Need Convincing

Decision makers in business who have encountered lawsuits usually understand the expense and aggravation of litigation. They have companies to run and far better ways to use financial and human resources than at the courthouse. Through mediation they are able to explore privately the opposition's interests, concerns, motivations, and goals. Commercial mediators, much like those in other types of cases, are adept at finding common ground to identify possible resolutions.

Along the way, lawyers will participate in evaluating the case, assessing legal positions, and gauging potential litigation outcomes – all of which may be challenged or tested by a commercial media-

tor. As counsel and the parties gain confidence in the selection of a mediator with commercial experience, they may be in more of a mindset to resolve the dispute on their interests rather than positions.

Appearance Planning

Rule 1.720 of the Florida Rules of Civil Procedure requires physical presence of a party at mediation unless otherwise stipulated in writing or excused by court order. A representative of an insurance carrier for any insured party who is not such carrier's outside counsel is deemed to appear if that person has full authority to settle in an amount up to the amount of the plaintiff's last demand or policy limits, whichever is less, without further consultation.

Additionally, 10 days prior to appearing at a mediation conference, a notice shall be filed with the court and served, identifying the person or persons who will be attending the mediation conference as a party representative or as an insurance carrier representative. Though mediators are not empowered to police this rule, and compliance has been slow to develop since the rule change in 2012, given the last-minute nature of the way things transpire in litigation today, it has been a rude awakening for some lawyers and litigants.

Regardless, it is crucial to have everyone with a say on the final settlement decision present at the mediation to hear the points made and experience the process. If a business partner, officer, spouse, or family member (sometimes all of the above) is going to help make the decision, he or she needs to attend. A deal struck after a full day of bargaining may evaporate if the need to confer with a missing decision maker suddenly arises in the eleventh hour. This must be balanced with attendees that are simply yes-men to the litigant or lawyer, which can lead to an inability to perceive valid points about the weaknesses of a particular claim.

Preparation

Success in commercial mediation is dependent upon adequate preparation of counsel and client. The best trial lawyers are prepared to try every case, even though statistics tell us most cases settle short of trial. A lawyer should know the important facts of the case – both good and bad. Counsel should be educated in the law applicable both to the claims and defenses, including the latest case law. Mediators, though equipped to do so at

the outset, expect the lawyers to have prepared the clients by describing the mediation process and discussing patterns of negotiation. Honest assessment of the strengths and weaknesses of the parties' positions, the likely result of litigation, and the potential expense will allow proper evaluation of whether a settlement makes sense.

Mediators often assess the ability of advocates using the quality of mediation submissions as evidence of readiness for trial and skill of the lawyer. By failing to submit a requested summary in confidence, or merely sending a stack of documents, the lawyer misses an opportunity to frame the issues and inform the mediator of the nuances in advance of the conference. Candid submissions are better than shared ones that repeat advocacy already apparent in the court file. Of course key pleadings, evidence, admissions, deposition excerpts, photos, and videos, are appropriate. Determining the presence and status of any commercial insurance coverage (and reservations of rights) is helpful to know as well.

Finally, whether the parties have or plan to engage in E-Discovery, the costs of specific types of electronically stored information subject to production in the dispute may overshadow the amount in controversy.

Lawrence H. Kolin, Esq., is a federal and Supreme Court of Florida Certified County, Circuit-Civil and Appellate Mediator in Orlando. He recently served as a general magistrate in the Ninth Judicial Circuit Court for Orange County. He is founding chair of the OCBA's ADR Committee and has been a member of the OCBA since 1994.

President's Message

continued from page 3

The OCBA, however, is unique. We have a focus on networking and social activities. We have a focus on service to our community – Legal Aid and the OCBA Foundation are exemplary demonstrations of this. But what sets us apart is that we have a third focus: Professionalism – on helping our professionals to know their craft and to practice it with skill, dignity, and honor. These three focal points makes a triangle – a shape known for its strength, and one within which our committees and our projects and our actions can all work to make our bar, our practices, and our community better at the same time.

Perhaps the best example of convergence of these triangulated goals occurs with our celebration that happens to coincide with the end of our bar year – Law Week. It brings our members together in multiple social settings, oriented around service to our community while encouraging everyone – in the legal field or not – to celebrate and appreciate the rule of law.

Which is why I sought out Tony Sos, Esq., and Nikki Rodeman, FRP, last year to take on the task of Law Week – and for which they did a spectacular job. I lobbied for them to both re-up, and they said yes. They did so before they knew I was adding a new wrinkle, a way to get Law Day out into our community in a more visible way, a way to perhaps increase the social aspect for our members. So, when April next becomes May, something you can look forward to,

be you a runner, a walker, or a cheering spectator – will be our first ever OCBA Law Day 5K!

Stronger committees. A better directory. And a celebratory lap for our profession at the end. These goals are meaningful and achievable. I do not promise that it'll be easy. But many hands make light work – which is a prime benefit of interconnectivity.

Those who were at the Paul C. Perkins scholarship lunch heard our Chief Judge Belvin Perry quote from Dr. Martin Luther King, Jr.:

Whatever affects one directly, affects all indirectly. I can never be what I ought to be until you are what you ought to be. This is the interrelated structure of reality.

Dr. King was talking about this same subject: Interconnectivity means we strengthen ourselves when we strengthen our partners. We are truly in this together. Recognizing this interconnectivity, we can make our profession better for each of us, and help ourselves to reach and serve our community, which is what our bar is all about. Thank you for allowing me to serve; I look forward to the challenge!

Nicholas A. Shannin, Esq., Board Certified Appellate Attorney at Shannin Law Firm, P.A., practices appellate and governmental law and serves as a Certified Circuit, Appellate, and Federal Mediator. He has been a member of the OCBA since 1994.



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Michelle Jernigan, Esq.

How Clients Think: The Brains Behind Decision Making – Part 2

In this installment of “The Brains behind Decision Making,” we continue our exploration of cognitive biases. In the next – and last – part of our three-part series, we will examine how reasoning by analogy, intuition, emotion, and mood influence decision making and then consider left- and right-brain functions and the differences in how the two hemispheres process information. That concluding part also will offer strategies or interventions to help you and your clients engage in better decision making.

We already have briefly reviewed the ways overconfidence, availability of information, confirmation, hindsight, and anchoring can bias the decision-making process, but today we reach beyond those effects with several others that are relevant to the discussion:

Sunk Cost Effect

The sunk cost effect comes into play when people become overly committed to a course of action in which they have made a substantial prior investment – whether time, money, or other resources. This is the “throwing good money after bad” quandary frequently seen in litigation and mediation.

Purely rational decision making would dictate that choices be based on the marginal costs and benefits of a particular course of action, while ignoring sunk costs. Consider the following example: Imagine that you are the president of an airline company. You have invested ten million dollars of the company’s money to research and develop an airplane that will not be detected by conventional radar. When the project is ninety percent complete, you discover another firm is marketing a plane that will not be detected by radar and that is faster and less expensive than the plane your company is building. Question: Should you invest the last ten percent of the research funds to finish your radar-blank plane? Eighty-five percent of the people sampled recommended completing the project even though this airplane would be inferior to the competitor’s plane already on the market. A second group of subjects received the identical fact scenario without any information regarding the ten million dollar investment. In that sampling, only seventeen percent opted to spend the money on the project. Clearly, the only difference was the sunk cost of ten million dollars.¹

Now apply this cognitive bias to your litigation practice. How many times have you or your cli-

ents been prone to proceed with a lawsuit simply due to the sunk costs? How many times have the sunk costs affected your decision with regard to settlement? What role should sunk costs play in settlement or litigation decisions? The attorney’s fees and court costs that should be considered in mediation are the totals going forward, in conjunction with a risk analysis, based on the likelihood of prevailing at trial.

Primacy or Priming Effect

The primacy or priming effect is the propensity of individuals to form impressions based on words or characteristics that occur earlier in a sequence than words or characteristics that occur later in a sequence. Psychologists conducting studies have discovered that individuals’ behavior can actually be influenced by “priming” them with certain impressions.

Consider this example in a study published by Solomon Asch:² One-half of subjects were asked for their impressions of someone who was envious, stubborn, critical, impulsive, industrious, and intelligent. The other half of subjects were asked about someone with the exact same characteristics, except that the characteristics were presented in the opposite order – intelligent, industrious, impulsive, critical, stubborn, and envious.

Asch discovered that the characteristics appearing early in the series of words influenced impressions more strongly than those appearing later in the series. After conducting numerous experiments of this type, Asch concluded that there is a general relationship between the position a word occupies and the effect it has on judgments. First impressions are the most important impressions!

John Bargh, a psychology professor at Yale University, conducted a priming study on two groups of students at New York University. Bargh gave both groups five word sets and asked them to make grammatically correct four-word sentences from each set. One of the groups had words that were associated with being polite, whereas the other group was given words associated with being rude. After completion of this exercise, the students were asked to go down the hall to the professor’s office and have their word scrambles graded. When the students arrived at the professor’s office, there was another student standing in the doorway asking the professor questions. To measure the effects of the priming, Bargh observed how long the students would wait before inter-

rupting the student in the doorway. The students who were primed with polite words either waited longer before interrupting, or did not interrupt at all. The students who were primed with rude words interrupted sooner and more frequently.³

We can shape people's impressions simply by using certain words in a particular context. By shaping people's impressions we can impact their behavior and their decision making. This technique is used frequently in mediation with opening statements. Mediators use words like "confidential," "informal," "voluntary," "listen," "consider," and "compromise," all of which set the tone for cooperative behavior.⁴ In their opening statements, lawyers often prime the opposing party to negotiate toward a settlement by using phrases such as "good faith negotiation," "apologize for your loss," "believe you have suffered," "want to do the right thing."

Priming can also be achieved through visualization and activity. When parties enter a mediation environment that is pleasantly decorated with warm colors, comfortable furnishings, Florida wildlife scenes, and the smell of chocolate chip cookies emanating from the kitchen, they are more poised for collaboration. Likewise, when a mediator has the opportunity to gather parties together and engage in the joint cognitive exercise of brainstorming multiple options for resolution, cooperation rather than competition is fostered among the parties.

Recency Effect

This bias is akin to the availability bias we discussed in the first part of our three-part series (*The Briefs*, June 2014, p. 8). The distinction between the two is that with the availability bias we place too much emphasis on available information, and with the recency effect we place too much emphasis on recent events or recent information.

Probably one of the most evident examples of the recency effect is the tendency of people to believe that clear weather today is an accurate prediction of clear weather tomorrow. The recency effect also influences what aspects of a presentation we are able to remember more clearly.

When it comes to evaluating the strengths of impressions and retention of information, it is important to examine which effect prevails – the primacy effect or the recency effect. Experiments have been conducted on this topic, and the results are quite informative. Researchers have discovered that people are more persuaded by the first communication than the second communication when the communications occur one right after the other.

However, people are more persuaded by the second communication than the first when there is a time lapse between the two.⁵ The primacy effect governs when communication occurs back to back, and the recency effect governs when there is some delay between the two communications. The primacy effect gives the Plaintiff an advantage in mediation because the Plaintiff generally presents first. The Defendant could utilize the recency effect and enhance the persuasiveness of its presentation by creating a delay between the Plaintiff's and Defendant's presentations.

Illusory Correlation

We often jump to the conclusion that there is a correlation between two variables when, in fact, none exists. Decision making could be affected because we assume "if x, then y," or we may even assume "x causes y" when there is not sufficient data to justify such a correlation. One example of illusory correlation is demonstrated in an experiment conducted by Chapman and Chapman in 1967.⁶ Clinicians were presented with descriptions of six types of patients and asked to indicate what characteristics the patient might display in a "Draw-A-Person" projective test. There was a strong measure of consensus among clinicians.

Eighty-two percent of clinicians stated that a patient who was concerned about his or her intelligence would draw an oversized head; ninety-one percent stated that a suspicious patient would draw large or atypical eyes. These correlations have no basis in fact and are simply shared clinical stereotypes.

Illusory correlations emerge because distinctive pairings "are highly 'available' in memory and are therefore overestimated in frequency."⁷

The way to guard against this type of cognitive bias is to challenge assumptions by examining the underlying data to see if it is relevant and accurate and then to perform appropriate statistical analysis to determine if the two variables occur with such frequency that there is a correlation. With "x causes y," the examination goes a step further because the mere presence of a correlation between two variables does not necessarily lead to causation. In the litigation context, illusory correlation generally will be minimized by the use of experts.

Framing

This cognitive bias was first made popular by authors Kahneman and Tversky in 1981. They theorized that an individual's decision-making process is more risk averse when something is framed as a gain and more risk seeking when something is framed as a loss. A simple example from Tversky and Kahneman's experiment⁸ is below:

Subjects were presented with options A and B, and asked to select their preference:

Alternative A: A sure gain of \$250;

Alternative B: A 25 percent chance to gain \$1,000, and a 75 percent chance to gain nothing.

Then subjects were presented with options C and D, and asked to select their preference:

Alternative C: A sure loss of \$750;

Alternative D: A 75 percent chance to lose \$1,000, and a 25 percent chance to lose nothing.

From an economist's viewpoint, how a problem is framed should make no difference. A is equivalent to B. C is equivalent to D, and the distribution of choices by subjects should be roughly equivalent. However, this is clearly not the case, due to the cognitive bias created by framing.

With respect to the first scenario, Tversky and Kahneman found that eighty-four percent of subjects chose Alternative A, which indicated that people tend to be risk averse when gains are at stake. With respect to the second scenario, they found that eighty-seven percent chose Alternative D, which exhibited that subjects were more risk seeking when losses were at stake. Seventy-three percent of subjects chose Alternatives A and D, and only three percent chose Alternatives B and C.⁹

Recent studies involving neuroscience have demonstrated that, when something is framed as a gain, it actually triggers pleasure in the brain and, when something is framed as a loss, the brain's pleasure center is suppressed. It is now believed that this suppressive effect could inhibit one's ability to think creatively about how to meet the desire for reward. So, in addition to taking greater risks to avoid the loss, the brain is further inhibited from imagining a creative way to achieve gain.¹⁰

The concept of framing has tremendous significance with respect to negotiation and mediation. Mediators frame things in certain

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Douglas E. Abrams, Esq.

George Orwell's Classic Essay on Writing: "The Best Style 'Handbook'" For Lawyers and Judges – Part II

Part I of this two-part article discussed British writer George Orwell's 1946 essay, *Politics and the English Language*.¹ Judge Richard A. Posner calls the essay "[t]he best style 'handbook',"² and Nobel Prize-winning economist Paul Krugman recently called it a resource that "anyone who cares at all about either politics or writing should know by heart."³

Orwell rejected the notion that "we cannot by conscious action do anything about the decline of language,"⁴ and he believed instead that "the process is reversible."⁵ The essay's capstones, the subjects of this Part II, were his diagnosis of the maladies that afflicted writing, followed by his six curative rules.

Diagnosis: "Swindles and Perversions"

Orwell diagnosed four "tricks by means of which the work or prose-construction is habitually dodged."⁶ He called the foursome "swindles and perversions":⁷

1. *Dying metaphors.* The language, Orwell wrote, sustains "a huge dump of worn-out metaphors" that "have lost all evocative power and are merely used because they save people the trouble of inventing phrases for themselves."⁸ He cited, among others, "toe the line," "run roughshod over," and "no axe to grind."⁹ To make matters worse, "incompatible metaphors are frequently mixed, a sure sign that the writer is not interested in what he is saying."¹⁰
2. *Operators or verbal false limbs.* Orwell said that these devices "save the trouble of picking out appropriate verbs and nouns, and at the same time pad each sentence with extra syllables which give it an appearance of symmetry."¹¹ Among the shortcuts he assailed here were replacing simple, single-word verbs with phrases that add little, if any, meaning (such as "prove to," "serve to," and the like), and using the passive voice rather than the active voice "wherever possible."¹² Also using noun constructions rather than gerunds (for example, "by examination of" rather than "by examining"), and replacing simple conjunctions and prepositions with such cumbersome phrases as "with respect to" and "the fact that."¹³ "The range of verbs is further cut down by means of the '-ize' and 'de-' formations,

and the banal statements are given an appearance of profundity by means of the 'not un-' formation."¹⁴

3. *Pretentious diction.* Orwell included words that "dress up simple statement and give an air of scientific impartiality to biased judgments" (such as "constitute" and "utilize"); and foreign phrases that "give an air of cultural elegance" (such as "ancien regime" and "deus ex machina").¹⁵ "Bad writers... are always nearly haunted by the notion that Latin or Greek words are grander than Saxon ones," even though "there is no real need for any of the hundreds of foreign phrases now current in English."¹⁶
4. *Meaningless words.* Here Orwell targeted art and literary criticism, and political commentary. In the former, "words like 'romantic,'... 'values,'... 'natural,' 'vitality'... are strictly meaningless." In the latter, the word "Fascism," for example, had "no meaning except in so far as it signifies 'something not desirable.'"¹⁷

Orwell's Six Curative Rules

Orwell believed that "the decadence of our language is probably curable,"¹⁸ and he proposed six rules as antidotes for the maladies he identified. "These rules sound elementary, and so they are," Orwell wrote, "but they demand a deep change of attitude in anyone who has grown up used to writing in the style now fashionable."¹⁹

Rule One: "Never use a metaphor, simile, or other figure of speech which you are used to seeing in print."

Orwell discussed a variety of clichés that might entertain, divert and perhaps even convince readers by replacing analysis with labels. "By using stale metaphors, similes and idioms," he said, "you save much mental effort, at the cost of leaving your meaning vague, not only for your reader but for yourself.... People who write in this manner usually have a general emotional meaning... but they are not interested in the detail of what they are saying."²⁰ He urged "scrapping of every word or idiom which has outworn its usefulness."²¹

In 2003, concurring Judge Stephen R. Reinhardt of the U.S. Court of Appeals for the Ninth Circuit cited Orwell's essay to make the point in *Eminence Capital, LLC v. Aspeon, Inc.*, a securities fraud class action.²² The court of appeals held that the district court had abused its discretion by dismissing, without leave to amend, the first

amended consolidated complaint for failure to state a claim. The panel reiterated, but rejected, the district court's conclusion that the plaintiffs already had "three bites at the apple."²³

"Such clichés," Judge Reinhardt began, "too often provide a substitute for reasoned analysis."²⁴ Noting that the district court failed to identify or analyze any of the traditional factors that would have supported dismissal without leave to amend,²⁵ Judge Reinhardt cautioned against "the use of clichés in judicial opinions, a technique that aids neither litigants nor judges, and fails to advance our understanding of the law."²⁶ "Metaphors," he explained, "enrich writing only to the extent that they add something to more pedestrian descriptions. Cliches do the opposite; they deaden our senses to the nuances of language so often critical to our common law tradition. The interpretation and application of statutes, rules, and case law frequently depends on whether we can discriminate among subtle differences of meaning. The biting of apples does not help us."²⁷

"The problem of clichés as a substitute for rational analysis," Judge Reinhardt concluded, "is particularly acute in the legal profession, where our style of writing is often deservedly the subject of ridicule."²⁸

Rule Two: "Never use a long word where a short one will do."

This rule placed Orwell in good company. Ernest Hemingway said that he wrote "what I see and what I feel in the best and simplest way I can tell it."²⁹ Hemingway and William Faulkner went back and forth about the virtues of simplicity in writing. Faulkner once criticized Hemingway, who he said "had no courage, never been known to use a word that might send the reader to the dictionary." "Poor Faulkner," Hemingway responded, "Does he really think big emotions come from big words? He thinks I don't know the ten-dollar words. I know them all right. But there are older and simpler and better words, and those are the ones I use."³⁰

"Broadly speaking," concurred Sir Winston Churchill, "the short words are the best, and the old words when short are best of all."³¹ "Use the smallest word that does the job," advised essayist and journalist E. B. White.³² In a letter, Mark Twain praised a 12-year-old boy for "us[ing] plain, simple language, short words, and brief sentences. That is the way to write English -- it is the modern way and the best way. Stick to it; don't let fluff and flowers and verbosity creep in."³³

"[H]ere's one good thing about language, there is always a short word for it," said humorist Will Rogers. "Course the Greeks have a word for it, the dictionary has a

word for it, but I believe in using your own word for it. I love words but I don't like strange ones. You don't understand them, and they don't understand you. Old words is like old friends -- you know 'em the minute you see 'em."³⁴

"One of the really bad things you can do to your writing," novelist Stephen King explains, "is to dress up the vocabulary, looking for long words because you're maybe a little bit ashamed of your short ones."³⁵ "Any word you have to hunt for in a thesaurus," he says, "is the wrong word. There are no exceptions to this rule."³⁶

Rule Three: "If it is possible to cut a word out, always cut it out."

What if the writer says, "In my opinion it is not an unjustifiable assumption that..."? Orwell proposed a simpler, less mind-numbing substitute: "I think."³⁷

"The most valuable of all talents is that of never using two words when one will do," said lawyer Thomas Jefferson, who found "[n]o stile of writing... so delightful as that which is all pith, which never omits a necessary word, nor uses an unnecessary one."³⁸ "Many a poem is marred by a superfluous word," said poet Henry Wadsworth Longfellow.³⁹ "Less is more," explained British Victorian poet and playwright Robert Browning, wasting no words.⁴⁰

Judges, in particular, can appreciate this short verse by Theodor Geisel ("Dr. Seuss"), who wrote for children, but often with an eye toward the adults: "[T]he writer who breeds/ more words than he needs/ is making a chore/ for the reader who reads./ That's why my belief is/ the briefer the brief is,/ the greater the sigh/ of the reader's relief is."⁴¹

Rule Four: "Never use the passive where you can use the active."

The passive voice usually generates unnecessary verbiage and frequently leaves readers uncertain about who did what to whom. The active voice normally contributes sinew not fat, clarity not obscurity.

Consider the second line of the Declaration of Independence: "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."

Would Jefferson have rallied the colonists and captivated future generations if he began instead with, "These truths are held by us to be self-evident...?"

Rule Five: "Never use a foreign phrase, a scientific word, or a jargon word if you can think of an everyday English equivalent."

In 2008, the U.S. Court of Appeals for the Seventh Circuit explained the pitfalls of jargon in *Indiana Lumbermens Mutual Insurance Co. v. Reinsurance Results, Inc.*, which held that the parties' contract did not require the plaintiff insurer to pay commissions to the company it had retained to review the insurer's reinsurance claims.⁴²

Writing for the *Lumbermens Mutual* panel, Judge Posner reported that the parties' briefs "were difficult for us judges to understand because of the density of the reinsurance jargon in them."⁴³ "There is nothing wrong with a specialized vocabulary -- for use by specialists," he explained. "Federal district and circuit judges, however, ... are generalists. We hear very few cases involving reinsurance, and cannot possibly achieve expertise in reinsurance practices except by the happenstance of having practiced in that area before becoming a judge, as none of us has. Lawyers should understand the judges' limited knowledge of specialized fields and choose their vocabulary accordingly. Every esoteric term used by the reinsurance industry has a counterpart in ordinary English."⁴⁴

Counsel "could have saved us some work and presented their positions more effectively," wrote Judge Posner, "had they done the translations from reinsurancesese into everyday English themselves."⁴⁵

Rule Six: "Break any of these rules sooner than say anything outright barbarous."

Orwell punctuated each of his first five rules with "never" or "always." Lawyers learn to approach these commands cautiously because most legal and non-legal rules carry exceptions based on the facts and circumstances.

Conventions of good writing ordinarily deserve adherence because most of them enhance content and style most of the time. They became conventions based on the time-tested reactions elicited by accomplished writers. Orwell recognized, however, that "the worst thing one can do with words is to surrender" to them.⁴⁶ As writers strive for clear and precise expression, they should avoid becoming prisoners of language.

Orwell's sixth rule wisely urges writers to follow a "rule of reason," but I would rely on personal judgment and common sense even when the outcome would not otherwise qualify as "outright barbarous." Good writing depends on sound grammar, spelling, style and syntax, but it also depends on willingness to bend or break the "rules" when advisable to maintain the bond be-

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Michael M. Brownlee, Esq.

Interview with the Honorable C. Alan Lawson

Mr. Brownlee: Describe your path to the appellate bench.

Judge Lawson: I performed my undergraduate work at Tallahassee Community College and Clemson University. I attended law school at Florida State University and graduated in 1987. I was in private practice with Steel, Hector & Davis until 1995. From 1997 through 2001 I was an assistant county attorney for Orange County. In 2002 I joined the Ninth Judicial Circuit as a circuit judge and held that position until I joined the 5th DCA in 2006.

Q: What has surprised you most since joining the appellate bench?

A: The volume of cases that comes through our court – the numbers keep going up every year. I'm also amazed how often three members of a panel, with different personal and legal backgrounds, come to the same conclusion about a case. Unfortunately, I was also surprised at the quality of lawyering. There are some excellent appellate lawyers who consistently submit quality work, but we see a lot of poor lawyering.



Hon. C. Alan Lawson

Q: That makes me very nervous – please elaborate!

A: Usually it is just a lack of editing – lots of typos and improper citations. I also see briefs which cite case after case but fail to flesh out the facts. Sometimes we don't even get a parenthetical description. If you want us to agree with your position, you need to explain what specific legal authority supports your argument. More importantly, you need to explain how that legal authority controls the facts of your case. A brief that cites three cases and carefully analyzes how those cases control is much more persuasive than a brief that cites one-hundred cases without adequately explaining why they matter to your argument.

Q: Other than those words of caution do you have any advice for young lawyers?

A: Find a good lawyer to mentor you.

Q: What do you consider the greatest strengths of the American legal system?

A: Our constitutional form of government with its checks and balances is second to none. It guarantees that we are truly governed by the rule of law. The jury system is also critical because it safeguards the right to a fair trial.

Q: What do you like to do in your spare time?

A: I like to run and read.

Q: A little bird told me you are fast. How fast are we talking?

A: My best marathon time is 3 hours and 27 minutes (7:54/mile).

Q: That is indeed fast. You must be the fastest judge in Florida.

A: Actually I don't think I am. I'm pretty sure Judge Black at the 2nd DCA has me beat.

Q: What do you read for fun?

A: Fiction, usually. Clive Cussler, David Baldacci, Lee Child, and Daniel Silva are among my favorite authors.

Q: What would you be doing if you weren't a judge?

A: Probably volunteer and missionary work.

Q: What is the last movie you saw that made an impression on you?

A: I enjoy movies for their sheer entertainment value, so I'm not much of a critic. I really enjoyed the recent *Star Trek* movie. And, before that, *The Hobbit* stands out.

Michael M. Brownlee, Esq., practices at Brownstone P.A., an appellate litigation firm. He has been a member of the OCBA since 2009.



Donna Anne Haynes

Craigslist Rental Scams Keep Jay Mobley Busy

Jamos Mobley, or “Jay” as his friends call him, began working part-time with the Legal Aid Society of the Orange County Bar Association in February 2013 as a participant in Florida Coastal’s postgraduate public interest program for newly admitted attorneys. He worked in that position for five months and then was offered a full-time staff attorney position. Jay graduated from the University of North Carolina with a bachelor of science in management in 2009. In May 2012, he graduated from Florida Coastal School of Law and was admitted to The Florida Bar in September 2012.

Jay is a veteran of the U.S. Armed Forces, having served in the U.S. Air Force during the Persian Gulf War. Jay is also a graduate of the U.S. Air Force Airman Leadership School, Offutt AFB in Nebraska. The camaraderie and dedication to duty which were instilled in Jay during his time in the U.S. Air Force serve him well in his work with the OCBA’s Veterans Committee and the Legal Aid Society’s VALOR project.



Jamos Mobley, Esq.

As a Legal Aid attorney, Jay works primarily in the areas of housing and consumer issues, which include conducting two weekly clinics. The first clinic is designed to assist tenants who are faced with a foreclosure action on the property they rent, and the second is designed to assist clients who have garnishment or debt collection actions filed against them.

Like most attorneys at the Legal Aid Society, Jay wears several hats. For example, Jay handles general intake for our prospective clients several times a month. During the intake process, he oversees a dedicated team of intake volunteers as they assist potential clients in completing an application for legal services. The volunteers also gather any relevant court papers, documents, or other information that will allow Jay to properly evaluate the legal issue and render whatever assistance Legal Aid can provide, given our limited resources. The range of issues presented at intake on any given day requires Jay, and all Legal Aid attorneys, to be familiar with myriad legal issues.

One intake case in particular stands out. A few weeks ago a young college student, with no one left to turn to for assistance, came to Legal Aid for

an emergency intake appointment. The student had recently rented a small house near campus and had paid his first and last month’s rent, as well as the security deposit, before moving into the property. Within a week of moving in, the client was surprised by a knock on his door. Upon answering it, he was faced with the true owner of the property asking why he was living in the house. The owner, who turned out to be the buyer at a foreclosure sale some months earlier, called the police and reported the client as a trespasser. Fortunately, the client produced a lease (although fraudulent) for the officers, and they advised the owner that he would have to file an eviction action. After interviewing the client, Jay discovered that the client had rented from an ad on Craigslist and had been the victim of a scam.

Of course, after speaking with Jay, the client realized that he would have to vacate the property and that he had been scammed. The problem was that he was not able to move by the following day as the owner demanded. The client also wanted to avoid an eviction action on the public record.

Jay contacted the property owner and was able to negotiate a move out date that allowed enough time for the tenant to find another rental. He also obtained an agreement that the owner of the property would not file an eviction action against the tenant prior to the agreed move out date. The client was very satisfied with the compromise and especially happy with the avoidance of an eviction action becoming part of the public record.

Unfortunately, this was not the first case of this type Jay has handled. On average, Jay assists one to two clients a week who have been the victim of fraudulent leases – especially Craigslist rental scams. There are myriad other housing-related issues that come through Legal Aid’s intake department, and dedicated staff attorneys like Jay are always ready to help.

It is an unfortunate truth in today’s economy that more often than not Legal Aid’s housing clients hear: “I’m afraid you are going to have to move if you cannot pay the rent.” There is little Legal Aid can do in cases where the client is not in rightful, paid possession of property. Clients in this situation are reminded that cable and cell phones are a luxury, not a necessity and that rent needs to be paid first, before any other bills.

That said, sometimes the property owners are

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Ericka S. Garcia, Esq.

Engaging with Families in Dependency Court Who Have Children with Special Needs

Children with special needs are three times more likely to be abused, abandoned, or neglected by their families than typical children. Why? Because parents themselves may have a disability, or a child's special need may have been caused by the lack of prenatal care and/or exposure to drugs and alcohol *in utero*. Sometimes there is no explanation; it just happened. For some families, a child's needs can be so overwhelming that parents may be paralyzed with fear and unable to seek the appropriate services. They may not even know who to ask for help.

When children are part of the dependency system, it is easy to blame the parents when the children have been medically neglected. What parent doesn't take his or her child to the doctor or request services when they believe their child is developmentally delayed or know that something is wrong? If the goal for these families is reunification – as it usually is – it is critical to engage the families from the beginning if we want to create a strong family unit.

Through an Autism Caregivers Education (ACE) grant, generously funded by Autism Speaks, Legal Aid's GAL program staff and volunteer GALs work with families to teach them to advocate and access services for children with an autism spectrum disorder. We work to ensure the children have been properly diagnosed and that families are empowered to request assistance for their child.

One child we have worked with, David, is a happy 5-year-old boy starting kindergarten this fall. When we began working with his family, he could not sit up on his own, something that most 6-month-olds can do, let alone walk or talk. When the Women, Infants, and Children (WIC) program called in an abuse report on the parents because the child was underweight, the court decided to keep David at home with his parents and ordered the dependency system to assist the family in getting services. When our GAL program staff initially visited with the family, rather than blame them for David's low weight, we listened and asked how we could help. The parents were relieved to hear that we could help guide them through the various government agencies they would need to access in order to help their son.

Ericka Garcia, Esq., Legal Aid's developmental disabilities attorney, began to work with the family and discovered their physician had refused to sign for any physical, speech, or occupational therapy

for David, and even failed to diagnose him with any medical condition. Someone told the parents the child had autism, but he was never tested. He also needed a wheelchair, braces to help him walk, and hearing aids. Yet again, the doctor refused to write a prescription for any of these items. The parents were extremely frustrated.

We helped the family enroll in Children's Medical Services (CMS), a Medicaid program for children with special needs, which allowed the family to switch the child's primary care physician for one who works exclusively with special needs children. With that simple change, the family was able to initiate all of the services and request equipment the child needed.

At first, the parents called CMS frequently because they had many questions about how to get things done. Over time, they began to understand the system and gained confidence in requesting what David needed in order to thrive. To the GALs this was a clear indication that the parents were ready to advocate effectively for their son.

As GALs, we are charged with investigating the allegations in a petition and determining what the family needs. GALs are also sometimes the only party ensuring that children receive all of the services to which they are entitled. GALs can help parents of children with special needs learn how to secure the same services the GAL requested. The ultimate goal is for families to have the knowledge and tools necessary to access services for their child once the dependency case closes and the GAL's services are no longer available.

Although they thanked Ericka for her help, it was the family that did the heavy lifting. Without their hard work, David would certainly not be making the progress he has been making in the last few months. The physical therapist recently told Ericka that the question is no longer whether David can walk, but *when* David will start walking. For a child who could not sit up a few months ago, this is incredible progress.

For more information about the GAL program, please contact Ericka Garcia at egarcia@legalaid-ocba.org. For information about donating to the Legal Aid Society, contact Donna Haynes at dhaynes@legalaidocba.org.

Ericka S. Garcia, Esq., is the developmental disabilities attorney with the Legal Aid Society of the OCBA, Inc. She has been a member of the OCBA since 2009.



Judy Johnson Kuhns

Longing for a New Home: Citizenship Day 2014

Amanda grew up in Zimbabwe and was gainfully employed there. After the country went on strike, riots became common place in the city where she lived. One afternoon, Amanda was trying to get home from work in the industrial part of town, but the rioters were throwing rocks and blocking the roads. They tore down buildings, beat people, and stole cars. She was frightened, and it took her several hours to travel the five miles from her work to home. It became apparent that the country that she loved was changing and was no longer safe. After that day, she decided to make changes in her life and in 1998, for the first time, she traveled to the United States to visit her sister who was married to a U.S. Marine. In 2002, during a visit with her sister, Amanda decided to apply for asylum. At that time, things in Zimbabwe had deteriorated so much that with no family there, it was too dangerous for her to return. She was granted asylum and then became a lawful permanent resident. Despite all the upheaval in her life, she completed culinary school and is pursuing a career as a baker.

Each year the Legal Aid Society receives countless calls from individuals like Amanda, seeking assistance to obtain their United States citizenship. And every April, the American Immigration Lawyers Association (AILA) sponsors "Citizenship Day."

Citizenship Day is designed to be a one-day workshop throughout the United States, where *pro bono* attorneys provide assistance to lawful permanent residents who are eligible for naturalization. This year the date was April 26th and, as in years past, LAS partnered with AILA, Justice for Our Neighbors (JFON), and the National Association for Latino Elected Officials (NALEO) to assist thirty-three individuals seeking naturalization.

Amanda attended Citizenship Day and was able to complete her application for naturalization. One of the expert immigration attorneys

reviewed her documents and directed her to file her application with United States Citizenship and Immigration Service. Amanda told us that she is so happy to have the opportunity to obtain her citizenship and stated, "I now belong somewhere!"

This year the naturalization application went from being ten pages long to twenty-one pages. Because of the volume of information being reported, it took each applicant approximately two hours to complete the form. With the help of thirty volunteers (non-immigration *pro bono* attorneys and lay individuals) as well as seventeen *pro bono* immigration attorneys, we were able to help many prospective citizens in one day. In total, 288 hours of time were donated by Orange County Bar Association members, AILA members, Barry law students, FAMU law students, Disney corporate attorneys, and JFON staff.

Citizenship Day is one of the milestones along the way for some seeking a better life and a new place to call home. Many of the attendees that day told us that obtaining citizenship means progress toward a better life for themselves and their children. They used words such as "freedom," "honor," and "belonging" to describe their motivation. Each person who attended the event was grateful for the time being donated by the various local organizations and individuals. Kudos to the *pro bono* attorneys of the OCBA and AILA for helping to make dreams come true for those longing for a new home!

For more information about volunteering at the Legal Aid Society, please contact Judy Kuhns at jjohnson@legalaidocba.org, or Donna Haynes at dhaynes@legalaidocba.org.

Judy Johnson Kuhns, the volunteer coordinator at the Legal Aid Society of the OCBA, Inc., has been a member of the OCBA since 2010.

Professionalism Committee

continued from page 6

Another big change at law schools is the way they treat their students. Many of the more seasoned attorneys grew up on *The Paper Chase*. While I know that this may be blasphemy to many, *The Paper Chase* did a poor job of preparing attorneys to become "professionals." The first thing the school did was scare all the students and told them, or at least implied, that the only way they were going to succeed was

by climbing over their fellow classmates, thereby instilling a guerrilla warfare mentality in students right from the beginning. Another problem was the way the professors treated the students. Instead of treating them like intelligent adults who were working to join a profession, they were treated like imbeciles, as if it were beneath the professors to speak with the students. While there are still some professors with this attitude, it is much less common.

I know that there is still much work to be done, but the state of professionalism (at

least in the Ninth Circuit) is improving. I have immensely enjoyed serving as chair of the Professionalism Committee, and I am confident that Carrie Ann and Kim will do a great job in continuing to improve professionalism in the Ninth Judicial Circuit.

Michael M. Kest, Esq. is chair of the Professionalism Committee. He has been a member of the OCBA since 2012.

¹The OCBA has numerous committees under its banner and I would highly encourage anyone who is interested to take a leadership role.

Labor and Employment Committee

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ways to create comfort, security, and opportunities for collaboration. Lawyers frame risk assessments in terms of losses and gains. One party's loss often may be the other party's gain, and vice versa. By strategy and word presentation, lawyers and mediators can positively or negatively impact parties' decision making. To encourage risk taking, a lawyer or mediator could frame a potential result in terms of a loss. To discourage risk taking, a lawyer or mediator could frame a potential result in terms of gain.

NEXT TIME: We discuss reasoning by analogy, intuition, emotion, and mood, and left brain/right brain differences, and offer some advice.

Michelle Jernigan, Esq., of Upchurch Watson White & Max, was one of the first mediators to be certified by the Florida Supreme Court 26 years ago. She has used her experience to collect and summarize what lawyers

need to know about how their clients – and parties who oppose them – make decisions. She has been a member of the OCBA since 1995. This article is being republished with permission of the author.

¹Scott Plous, *The Psychology of Judgment and Decision Making*, 244 (1993).

²*Id.* at 42.

³Emily Fusting, *Making the Brain a Friend Not a Foe: What Interventionists Should Know about Neuroscience*, 6 Am. J. of Med. 51 (2012).

⁴Daniel Weitz, *The Brains Behind Mediation: Reflections on Neuroscience, Conflict Resolution and Decision-Making*, 12.2 Cardozo J. of Con. Res. 478-479 (Spring 2011).

⁵Scott Plous, *supra* at 43-44.

⁶Scott Plous, *supra* at 165.

⁷Scott Plous, *supra* at 167.

⁸Scott Plous, *supra* at 70.

⁹*Id.*

¹⁰Emily Fusting, *supra* at 45; Richard Birke, *Dispute Resolution: Neuroscience and Negotiation*, http://www.americanbar.org/publications/gp_solo/2012/may_june/dispute_resolution_neuroscience_negotiation

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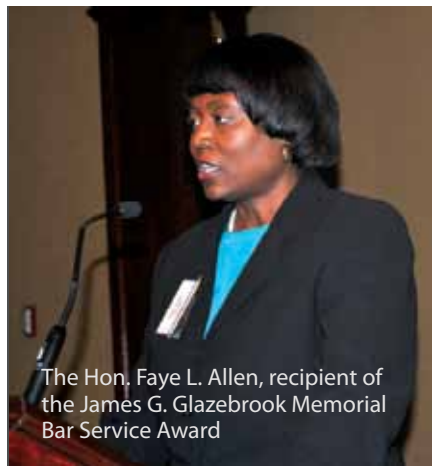
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The Hon. Faye L. Allen, recipient of the James G. Glazebrook Memorial Bar Service Award

Nicholas Shannin, Esq., incoming OCBA President, presents OCBA's Outstanding Service Awards



Executive Council Lifetime Achievement Award: William Vose, Esq.

2014-2015 OCBA Installation & Awards Banquet

May 29, 2014

The Ballroom at Church Street



Paul Scheck, Esq., accepts a gift for his service as OCBA President, 2013-2014



Law Week: Nikki Rodeman, FRP, and Anthony Sos, Esq.



Executive Council: Nichole Mooney, Esq.



Gala: Jill Schwartz, Esq., and Kimberly Webb, Esq.



Committee Chair: Thomas Boroughs, Esq.



Committee Chair: Lori Caldwell-Carr, Esq.



Wiley Boston, Esq., recipient of the OCBA Foundation Outstanding Service Award, presented by Nichole Mooney, Esq.



The Hon. John Antoon, II, U.S. District Court, Middle District of Florida



Past OCBA Presidents: Wayne Helsby, Esq., Woody Rodriguez, Esq., Paul SanGiovanni, Esq.



Susan A. Fuller receives Paralegal of the Year Award from outgoing Paralegal Section President, Bethany Gibson



Mary Anne De Petrillo, Esq., Legal Aid Society Executive Director, was honored for her 30 years of service to LAS. The Orange County Courthouse Resource Center will be named in her honor this summer. A recognition plaque was presented by past OCBA and LAS President, Tad Yates, Esq.

Legal Aid Society of the OCBA, Inc. awards presented by William Davis, Esq., incoming LAS President



Edward R. Alexander, Jr., recipient of the LAS's Judge J.C. "Jake" Stone Distinguished Service Award



Guardian ad Litem Award of Excellence: Harold E. Morlan, II



Law Student Award of Excellence: Andrew Schrager



New Attorney Award of Excellence: Kelli A. Murray, Esq.



Guardian ad Litem Award of Excellence: Gregg A. Page



New Attorney Award of Excellence: Jamie M. Blucher, Esq.



Volunteer Advocate of the Year Award of Excellence: Patricia A. Cannon



VALOR Project Award of Excellence: P. Thomas Boroughs



Glenn Adams, Esq., outgoing Legal Aid Society President

installation



LAS Recognition of Service, 2012-2014:
Nichole M. Mooney, Esq.



Pro Bono Champion Award of Excellence:
Aubrey Harry Ducker, Esq.



Glenn Adams, Esq., 2013-2014, receives the
Legal Aid Society's President's Award



LAS Recognition of Service, 2005-2014:
Meenakshi A. Hirani, Esq.



R. Lee Bennett, Esq., receiving
the Law Firm Award of
Excellence: GrayRobinson P.A.



Outstanding Board Member Award:
Richard S. Dellinger, Esq.



Teen Court Project Award of Excellence:
Frank H. Killgore, Jr.



Citizens Dispute Settlement
Project Award of Excellence:
Gregory P. McMahon



LAS Recognition of Service 2007-2014:
Norberto S. Katz, Esq.



Swearing-in of the 2014-2015 OCBA Foundation Officers & Board



2014-2015 OCBA President,
Nicholas Shannin, Esq.



Swearing-in of the 2014-2015 Paralegal Section Officers & Board



Three Shannin Generations: Jake, Carol, Nick, Anna,
Andrea, and Jack Shannin



Swearing-in of the 2014-2015 Young Lawyers Section Officers & Board



Kelly Richards, Pianist



Swearing-in of the 2014-2015 Legal Aid Society Officers and Trustees



Swearing-in of the 2014-2015 OCBA Officers & Executive Council

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Hearsay...



Christine A. Wasula, Esq.

There's an old saying about summer. You can't wait for it to get here and you can't wait for it to be gone. I am realizing the truth of that saying as I sit here trying to write my *Hearsay* column with two kids screaming "Mommy" in the background and climbing all over me while I'm trying to type. So this is going to be an abbreviated column, and I have no time to formulate a clever introduction. Instead, I'm going straight to the news.

Jeffrey D. Keiner, Esq., a shareholder at **GrayRobinson** and an AV-rated attorney in Orlando for more than 30 years, has been named by Chief Judge Belvin Perry, Jr. to serve as chairperson of the newly formed Ninth Judicial Circuit of Florida's Professionalism Panel. You know how attorneys are always complaining about how unprofessional their opposing counsel is? Well, our complaints have finally made their way to the Florida Supreme Court, which has directed the chief judge of each circuit in Florida to create a local professionalism panel to receive, screen, and act upon complaints of unprofessional conduct, and to resolve those complaints by application of existing practice standards. Jeffrey will head the Ninth Judicial Circuit panel. Panel members will be nominated by the Orange and Osceola County Bar associations, a broad spectrum of professional groups, and several at-large members selected by Judge Perry.

Bruce Blackwell, Esq., the founding shareholder of **King, Blackwell, Zehnder & Wer-muth, P.A.**, has been named as executive director of The Florida Bar Foundation, a statewide charitable organization that works on behalf of Florida's legal profession to provide greater access to justice. Bruce is a past Foundation president and is widely renowned for his *pro bono* work, professional leadership, and service to the organized bar.

Julia L. Frey, Esq., a partner at **Lowndes, Drosdick, Doster, Kantor & Reed, P.A.**, has been elected as chair of the board of trustees for WMFE 90.7. WMFE is a non-profit, member-supported, community-based public broadcasting company that operates 90.7 WMFE-FM, metro Orlando's primary provider of NPR programming. Part of the community since 1965, WMFE focuses on providing quality national and local news programming.

Ryan E. Davis, Esq., a shareholder at **Winder-weedle, Haines, Ward & Woodman, P.A.**, gets two mentions in this month's column. First, he has been elected to the board of directors of the Adult Literacy League, which provides adult basic education and English language literacy through one-to-one tutoring and class instruction. Sec-

ond, he has been selected for the 2014-2015 Florida Bar Leadership Academy. This is only the second annual class for the academy, which is aimed at promoting diversity and developing leaders in the legal profession. He and the other members began their leadership training sessions at the annual convention in June. Throughout the year, they will work closely with president Greg Coleman, incoming president-elect Ramon Abadin, and other bar leaders to enhance their leadership skills and become better leaders in the profession. Ryan and his wife, **Amber Neilson Davis, Esq.**, are fast on their way to becoming a new power-couple in Orlando legal circles, as Amber was just elected as president-elect of the Young Lawyers Section of the OCBA. So watch out for these two and try to stay on their good side!

Chambers USA has announced its Leading Lawyers for Business for 2014, and numerous OCBA members have made the list. At **FordHarrison, James Brown, Esq.**, **Thomas Garwood, Esq.**, and **Aaron Zandy, Esq.**, have been named as leading individuals in labor and employment law.

At **BakerHostetler**, several attorneys have been named as leaders in their areas of practice: Bankruptcy/Restructuring – **Elizabeth A. Green, Esq.**, **Jimmy D. Parrish, Esq.**, **Tiffany D. Payne, Esq.**; Construction – **Denis L. Durkin, Esq.**; Environment – **William L. Pence, Esq.**; Healthcare – **David L. Schick, Esq.**, Labor & Employment – **Joyce Ackerbaum Cox, Esq.**, **Patrick M. Muldowney, Esq.**, and **Kevin W. Shaughnessy, Esq.**; Leisure and Hospitality – **John Melicharek Jr, Esq.** and **Robert J. Webb, Esq.**; Litigation: General Commercial – **Robert W. Thielhelm Jr, Esq.**; Real Estate: Zoning & Land Use – **Gregory D. Lee, Esq.** (There are a couple of other attorneys from BH who were also on the list but I did not mention them here because they are not OCBA members. So let that be an incentive for them to join! And if they join quickly, I promise to mention them in a future column.)

At **Burr & Forman LLP**, four attorneys were named as leaders in Bankruptcy/Restructuring: **Denise D. Dell-Powell, Esq.**, **Eric S. Golden, Esq.**, **Jon E. Kane, Esq.**, and **Michael A. Nardella, Esq.** I'd like to give a special shout-out to Eric Golden, Esq., who started out with me as an associate at BakerHostetler in 1998. We had an early hiccup in our working relationship because he stole the office I wanted, but we put that incident behind us long ago, and I'm happy to wish him a heartfelt congratulations on this accomplishment.

Finally, I would like to welcome attorney **Ter-**

rence Keough, Esq., to 734 Rugby Street, as he is now sharing office space with the **Law Offices of Tad Yates, P.A.** Terry is an all-around great guy, and he has been practicing criminal law for almost 35 years, so I know he will be an invaluable source of advice. He also appears to be quiet and neat, which is a good quality to have in a neighbor. Welcome to the office, Terry!

As I mentioned earlier, having the kids out of school equals an extremely short column, so that's all I have for this month. If you have any funny photos from your summer vacation, please send them to me, and I will include the funniest submission in next month's column. As always, if you have any *serious* items, please send them to our communications manager, Peggy Storch, at peggys@ocbanet.org, or me at chris@tadyates.com. In the meantime, have fun and stay out of trouble!

Christine A. Wasula, Esq., Law Offices of Tad Yates, P.A., has been a member of the OCBA since 2003.

LASWhat We Do... *continued from page 15*

looking to wrongfully gain wealth against the working poor – with violations of health, safety, and welfare. Often our clients do not know they may have rights that can protect them from an unscrupulous landlord. Many of our housing clients live in conditions that most of us would find abhorrent, and these clients are unaware that a landlord cannot rip out electric meters or plumbing when the client is late paying the rent. At those times, we find that a clear communication of tenant rights to both the tenant and the landlord often remedies the situation. It is not always pretty, but a lawyer skilled in poverty law is often what tips the scales of justice back into balance.

Jay is one of those lawyers. When you combine his dedication and drive with his skills in housing and debtor relief matters, it is a great package.

For more information about landlord-tenant matters or consumer law, contact Jay Mobley at jmobley@legalaidocba.org. For information about how to donate to the Legal Aid Society, please contact Donna Haynes at dhaynes@legalaidocba.org.

Donna Anne Haynes, Development Manager at the Legal Aid Society of the OCBA, Inc., has been a member of the OCBA since 2008.

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tween writer and reader. Within bounds, readers concern themselves more with the message than with what stylebooks say about conventions.

Orwell's fourth rule illustrates why good writing sometimes depends on departing from rules. The fourth rule commands, "Never use the passive where you can use the active." Look again at the second line from the Declaration of Independence, quoted above. It contains a phrase written in the passive voice ("that they are endowed by their Creator with"). The active-voice alternative ("that their Creator endowed them with") would not have been "outright barbarous," but Jefferson would have sacrificed rhythm and cadence. Passive voice enhanced the flow, left no doubt about who did the endowing, and did not slow the reader with two extra words.

This rule of reason grounded in personal judgment and common sense extends beyond Orwell's first five rules to writing generally. For example, when splitting an infinitive or ending a sentence with a preposition would enhance meaning or produce a more fluid style, then split the infinitive or end the sentence with a preposition. Maintaining smooth dialog with readers is more important than leafing through stylebooks.

Sir Winston Churchill, a pretty fair writer himself, reportedly had a tart rejoinder for people who chastised him for sometimes ending sentences with prepositions. "That," he said, "is the sort of arrant pedantry up with which I shall not put."⁴⁷

Conclusion

Lack of clarity, Orwell's major target, normally detracts from the professional missions of lawyers and judges. What Justice William J. Brennan, Jr. called "studied ambiguity"⁴⁸ might serve the purposes of legislative drafters seeking to avoid specificity that could fracture a fragile majority coalition. Studied ambiguity might also serve the purposes of a lawyer whose client seeks to feel out the other parties early in a negotiation. Without maximum clarity, however, written buck-passing may compel courts to finish the legislators' work, or may leave the parties saddled with an agreement whose misunderstandings lead parties to the courtroom.

Similar impulses prevail in litigation. Advocates persuade courts and other decision makers most effectively through precise, concise, simple and clear expression that articulates why the facts and the governing

law favor their clients.⁴⁹ Judges perform their constitutional roles most effectively with forthright opinions that minimize future guesswork.

How often today do we still hear it said that someone "writes like a lawyer"? How often do we hear it meant as a compliment? Judge Stephen R. Reinhardt put it well in *Eminence Capital, LLC v. Aspeon, Inc.*: "It is long past time we learned the lesson Orwell sought to teach us."⁵⁰

***Douglas E. Abrams, Esq.**, a University of Missouri law professor, has written or co-authored five books. Four U.S. Supreme Court decisions have cited his law review articles.

¹George Orwell, *Politics and the English Language*, in *ESSAYS ON LANGUAGE AND USAGE* (Leonard F. Dean & Kenneth G. Wilson eds., 2d ed. 1963).

²Richard A. Posner, *Judges' Writing Styles (and Do They Matter?)*, 62 U. CHI. L. REV. 1421, 1423 n.8 (1995).

³Paul Krugman, *Orwell, China, and Me*, N.Y. TIMES BLOGS (July 20, 2013).

⁴Orwell, *supra* note 1, at 325.

⁵*Id.*

⁶*Id.* at 327.

⁷*Id.* at 330.

⁸*Id.* at 327.

⁹*Id.*

¹⁰*Id.*

¹¹*Id.* at 328.

¹²*Id.*

¹³*Id.*

¹⁴*Id.*

¹⁵*Id.*

¹⁶*Id.*

¹⁷*Id.* at 329.

¹⁸*Id.* at 334, 335.

¹⁹*Id.*

²⁰*Id.* at 331-32.

²¹*Id.* at 334.

²²316 F.3d 1048 (9th Cir. 2003).

²³*Id.* at 1053.

²⁴*Id.*

²⁵*See Foman v. Davis*, 371 U.S. 178, 182 (1962) (stating the factors).

²⁶*Eminence Capital*, 316 F.3d at 1053.

²⁷*Id.* at 1053-54.

²⁸*Id.* at 1054.

²⁹A.E. HOTCHNER, *PAPA HEMINGWAY* 69 (1966) (quoting Hemingway).

³⁰*Id.* at 69-70 (1966) (quoting Hemingway); *see also*, e.g., Kurt Vonnegut, Jr., *The Latest Word* (reviewing THE RANDOM HOUSE DICTIONARY OF THE ENGLISH LANGUAGE (1966)), N.Y. TIMES, Oct. 30, 1966, at BR1 ("I wonder now what Ernest Hemingway's dictionary looked like, since he got along so well with dinky words that everybody can spell and truly understand.").

³¹Susan Wagner, *Making Your Appeals More Appealing: Appellate Judges Talk About Appellate Practice*, 59 ALA. LAW. 321, 325 (1998) (quoting Churchill).

³²Max Messmer, *It's Best to be Straightforward On Your Cover Letter, Resume*, PITTSBURGH POST-GAZETTE, Nov. 29, 2009, at H1 (quoting White).

³³ROBERT HARTWELL FISKE, THE DICTIONARY OF CONCISE WRITING: 10,000 ALTERNATIVES TO WORDY

PHRASES 11 (2002); *see also*, e.g., British Victorian novelist George Eliot (Mary Ann Evans), *quoted at Plain-language.gov*, <http://www.plainlanguage.gov/resources/quotes/historical.cfm> ("The finest language is mostly made up of simple unimposing words"); Irish poet William Butler Yeats, *Id.* ("Think like a wise man but communicate in the language of the people."); C.S. LEWIS' LETTERS TO CHILDREN 64 (Lyle W. Dorsett & Marjorie Lamp Mead eds., 1985 (emphasis in original)) ("Don't implement promises, but keep them"; "Don't say 'infinitely' when you mean 'very', otherwise you'll have no word left when you want to talk about something really infinite.").

³⁴BETTY ROGERS, WILL ROGERS 294 (1941; new ed. 1979) (quoting Will Rogers).

³⁵STEPHEN KING, ON WRITING: A MEMOIR OF THE CRAFT 110 (2000).

³⁶Stephen King, *Everything You Need to Know About Writing Successfully: in Ten Minutes* (1986), https://www.msu.edu/~jdowell/135/King_Everything.html.

³⁷Orwell, *supra* note 1, at 331.

³⁸Cindy Skrzycki, *Government Experts Tackle Bad Writing*, WASH. POST, June 26, 1998, at F1 ("most valuable," quoting Jefferson); THE FAMILY LETTERS OF THOMAS JEFFERSON 369 (E.M. Betts and J.A. Bear, Jr. eds., 1966) (letter of Dec. 7, 1818) ("style of writing").

³⁹III THE WORKS OF HENRY WADSWORTH LONGFELLOW WITH BIBLIOGRAPHICAL AND CRITICAL NOTES AND HIS LIFE, WITH EXTRACTS FROM HIS JOURNALS AND CORRESPONDENCE (1886-1891), at 278.

⁴⁰Robert Browning, *Andrea del Sarto*, in PICTOR IGNOTUS, FRA LIPPO LIPPI, ANDREA DEL SARTO 32 (1925); *see also*, e.g., SOMETHING TO SAY: WILLIAM CARLOS WILLIAMS ON YOUNGER POETS 96 (James E. B. Breslin ed., 1985) ("Everyone who writes strives for the same thing... To say it swiftly, clearly, to say the hard thing that way, using few words. Not to gum up the paragraph.").

⁴¹Richard Nordquist, "We Can Do Better": Dr. Seuss on Writing, <http://grammar.about.com/od/advicefromthepros/a/seusswrite09.htm> (Aug. 9, 2010).

⁴²513 F.3d 652 (7th Cir. 2008).

⁴³*Id.* at 658.

⁴⁴*Id.*

⁴⁵*Id.*; *see also*, e.g., *Miller v. Illinois Cent. R.R. Co.*, 474 F.3d 951, 955 (7th Cir. 2007) ("much legal jargon can obscure rather than illuminate a particular case."); *New Medium LLC v. Barco N.V.*, No. 05 C 5620, 2009 WL 1098864 * 1 (N.D. Ill. Apr. 15, 2009) (Posner, J., sitting by designation as a trial judge) ("[a]ll submissions must be brief and non-technical and eschew patent-law jargon. Since I am neither an electrical engineer nor a patent lawyer... the parties' lawyers must translate technical and legal jargon into ordinary language.").

⁴⁶Orwell, *supra* note 1, at 335.

⁴⁷*See*, e.g., Susan E. Rowe, *Six to Nix: Grammar Rules to Leave Behind*, 67 OR. ST. BAR BULL. 37 (Nov. 2006).

⁴⁸William J. Brennan, Jr., *Some Thoughts On the Supreme Court's Workload*, 66 JUDICATURE 230, 233 (1983).

⁴⁹HENRY WEIHOFEN, LEGAL WRITING STYLE 8-104 (2d ed. 1980) (discussing these four fundamentals).

⁵⁰*Eminence Capital, LLC v. Aspeon, Inc.*, 316 F.3d 1048, 1054 (9th Cir. 2003).

(Editors' note: Case names in endnotes have been italicized.)

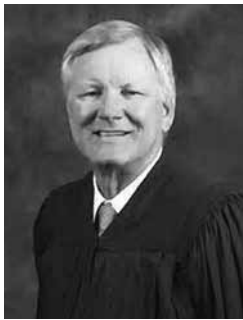
"*The Best Style 'Handbook' For Lawyers and Judges (Part II)*" by Douglas E. Abrams, Esq. was first published in *Precedent Fall 2013*, a publication of the Missouri Bar Association. It is reprinted here with permission of the author and the Missouri Bar. Professor Douglas E. Abrams teaches at the University of Missouri School of Law.



Daryl P. Gottlieb, Esq.

Interview with the Honorable Thomas R. Kirkland

The Honorable Thomas R. Kirkland received an undergraduate degree in industrial management from the University of Florida in 1965 and his juris doctorate from the Stetson University College of Law in 1982. In the early years of his career as a private practitioner, he had the unique experience of both practicing law and presiding as an associate city judge at the same time. Article V of the Florida Constitution eliminated municipal courts, so when Judge Kirkland took the bench it was as an Orange County judge. He has presided in numerous divisions spanning a 30-year career. He is now a senior judge and helps when and where help is needed.



Hon. Thomas R. Kirkland

Judge Kirkland hails from Eustis, Florida, where he was born in 1943. His father, Thomas E. Kirkland, who was the biggest influence on his son's career, was chief judge of the Ninth Judicial Circuit when he passed away in 1982. It was not entirely shocking when the chief judge's son decided to follow in his father's footsteps.

When asked about the current strengths of the legal system, Judge Kirkland spoke about the consistency of our judicial system, especially in comparison to the rest of the world, and noted that "[w]e have had the same justice system for a long time, and the same justice you obtain now is the same justice you could expect to receive for many generations."

When asked the same question with respect to the system's weaknesses, he lamented the general public's negative perception of the legal system and the fact most people only know about our system of justice by way of a few nationalized court cases. He also attributed this poor public perception to "judge" television shows and the deluge of lawyer advertising in today's marketplace.

In offering wisdom to young and aspiring attorneys, Judge Kirkland emphasized the importance of new attorneys finding a mentor, taking advantage of the advice of senior attorneys, and participating in clinics and practical coursework in law school.

Judge Kirkland noted that he has always considered it a very professional act for attorneys to simply acknowledge when the other side is correct in a position it has taken. Conversely, he considers it unprofessional when attorneys misstate the law, make their cases personal with opposing counsel, or argue with the judge once a decision has been made.

Because of his unique early career experience, Judge Kirkland has always been able to appreciate the role of the judiciary and its unique responsibilities and challenges. According to Judge Kirkland, one of the most difficult aspects of being a judge is the isolation many judges feel. Contributing to this sense of isolation is the fact that a judge must always be careful of what he or she says, both on and off the bench.

Outside of the practice of law, Judge Kirkland has a passion for traveling, reading, and golf – and he is an avid Gator fan! He and his wife travel annually to Italy and often visit other areas of the globe. Their goal is to always do "vacation with a purpose," meaning they combine a unique travel experience with opportunities to help the people in the areas in which they are traveling. Judge Kirkland noted that one of the most memorable experiences he has had was when he was on a cruise around China and took several boat transfers to see tribes of indigenous people living in the Yangtze River valley. He said spending time with the people was a truly unique experience, and he reflected upon the impact that building the dams has had on the individuals who live in the region.

The breadth and longevity of Judge Kirkland's professional experience, when combined with his personal attributes and life experience, truly make him an invaluable asset to the judiciary.

Daryl P. Gottlieb, Esq., formerly of Fisher Rushmer, P.A., now serves as assistant vice president and in-house counsel for Fidelity National Financial, Inc., in Jacksonville, FL.



YLS *on the move*

Summer is officially here, and things are just heating up for the YLS! A special thanks to all of those who coordinated, attended, and sponsored our past events – we could not do it without you!



Chanel A. Mosley, Esq.

On May 14, 2014, the **May YLS luncheon** was held at the Citrus Club for our annual **Pass the Gavel** ceremony. Several former YLS presidents appeared for the occasion to welcome incoming president **Karen Persis, Esq.**, including **Ryan Davis, Esq.**, **Chelsie Flynn, Esq.**, **LaShawn-da Jackson, Esq.**, **Jim Lussier, Esq.**, **Liz McCausland, Esq.**, **Mary Ann Morgan, Esq.**, **Jamie Moses, Esq.**, **Eric Reed, Esq.**, **Woody Rodriguez, Esq.**, **Paul SanGiovanni, Esq.**, **Paul Scheck, Esq.**, **Nick Shannin, Esq.**, **Tony Sos, Esq.**, and **Tom Wert, Esq.** We wish Karen all the best and know that the coming year will be a success with her at the helm! Additionally, the YLS would like to thank its luncheon sponsors for their continued support of our organization and helping to keep luncheon costs down for our members: **ProServe; Cross, Fernandez and Riley, LLP; Ricoh Legal; and US Legal Support.**

On May 15, 2014, the **YLS Mentoring Program** wrapped up its year with the **End of Year Kick-off Happy Hour** at Ember. The Mentoring Program paired 89 second- and third-year law students with young attorneys this school year. The program is designed to foster in law students an early appreciation for the importance of practicing with professionalism. A big thank you to **Skinner Louis, Esq.**, and his vice chairs, **Stephen Oakley, Esq.** and **Jessica Travis, Esq.**, for another successful year!

On May 17, 2014, the YLS participated in the **American Cancer Society's Relay for Life "Crawl for a Cure"** fundraiser. The pub crawl raised \$2,000 to support the fight against cancer,

as YLS members joined forces with residents of College Park as well as Ollie's Public House, The Local Ragazzi's, O-Town, and Graffiti Junction. Congratulations to **Andrew Roy, Esq.**, and his committee for a great event, and thank you to those who donated for the cause!

Additionally, there are several great future events to keep a lookout for:

The **IDignity** event will be held on **July 17, 2014** at the Orlando Union Rescue Mission, 410 W. Central Blvd. in Orlando. At the event, service providers from the Orange County Health Department, Florida Department of Motor Vehicles, Orange County Tax Collector, and other agencies will come together with volunteers to assist disadvantaged residents of Central Florida in obtaining identification documents. We are seeking volunteers to commit to serving at the event in order to show our continued support for this vital organization, so please contact **Thomas Pratt, Esq.**, at citizenslegal@outlook.com, or **Pamela Martini, Esq.**, at pmartini@circuit5.org for more details or to volunteer.

The annual **Young Lawyers and Law Clerks Reception** will be held on **July 16, 2014**, at 6:00 p.m. at the Orange County Regional History Center in Downtown Orlando. For more information or to learn about event sponsorships, please contact **Heather Kozlowski, Esq.**, at Heather.Kozlowski@csklegal.com. To RSVP, go to the OCBA Store at www.orangecountybar.org/store.

The **July YLS luncheon** will take place on **July 18, 2014**, at the Citrus Club beginning at 11:30 a.m. and ending at 1:00 p.m. Casual attire, including jeans, is acceptable and jackets are not required. For a wonderful three-course meal, the cost is only \$10 for all OCBA YLS members and judges, thanks to the wonderful help of our sponsors. Please be sure to **RSVP to yls.ocba@gmail.com no later than July 15, 2014.**

A late charge of \$4 will be added for all RSVP's received after the deadline. Additionally, please note that the YLS is charged for all RSVPs, so please notify us if you have made an RSVP but are unable to make it. We hope to see you at the luncheon!

Chanel A. Mosley, Esq., Marshall, Dennehey, Warner, Coleman & Goggin, P.C., has been a member of the OCBA since 2010.



Incoming YLS president Karen Persis, Esq., and outgoing YLS president Lauren Heatwole McCorvie, Esq., at the YLS's annual "Pass the Gavel" luncheon



Relay for Life pub crawlers!



Elliott Wilcox, Esq.

“I’ve Never Been Convicted of a Felony”

Using Vocal Emphasis to Bring Your Message to Life

Your words will take on different meanings depending on how you emphasize them. In this article, you’ll learn how to take full advantage of the power of your voice to emphasize words, fill them with meaning, and help your audience understand the message you want to convey.

Imagine for one moment that you’re reading through a court transcript when you encounter the following phrase: “I’ve never been convicted of a felony.”

What message do you think the witness intended? If you’re like most readers, you probably think that the witness intended the literal message: He has never been convicted of, or even accused of, committing a felony.

But that may not necessarily be what the witness intended. Without changing the order of the words, how many different meanings can you assign to that phrase? Using only slight changes in your voice, that single phrase could have up to six different meanings, depending on which word is emphasized.

1. ***“I’ve never been convicted of a felony.”***

The other executives were convicted. My family members were convicted. Even my lawyer took a fall. But not me.

2. ***“I’ve never been convicted of a felony.”***

I completely deny your allegations. It’s never happened, not once in my entire life. I’ve never even been charged with a crime. Anyone who says different is a liar.

3. ***“I’ve never been convicted of a felony.”***

I’m about to be. I’ll be convicted tomorrow morning at 9:30 a.m. in courtroom 9-D. I’ll be spending the next 20 years in prison. But just so we’re clear, up until this point, my record is untarnished.

4. ***“I’ve never been convicted of a felony.”***

Oh sure, I’ve been arrested, indicted, and brought to trial on numerous occasions. But somehow (wink wink, nudge nudge) the jury has never returned with a “guilty” verdict.

5. ***“I’ve never been convicted of a felony.”***

When I’m convicted, they usually come in multiples of eight. For example, the last time I was convicted, the jury found me guilty of 56 separate offenses. Before

that, 24 felony convictions in a single sitting. But never a single felony...

6. ***“I’ve never been convicted of a felony.”***

Misdemeanors? Oh, sure – hundreds, probably, thousands of those. But I’m proud to tell you that none of my convictions are for felony offenses.

That single phrase takes on a variety of meanings when spoken aloud. By emphasizing different words, you breathe life and vibrancy into your words. Depending on where you place your emphasis, you completely change the meaning of the phrase.

If you want to develop that vocal skill so you can bring words to life, emphasize important phrases, and help your audience understand what you mean, you need to master the skill of vocal emphasis. Here’s how:

Start by asking a friend to listen as you say the phrase, “I’ve never been convicted of a felony.” Before you say the phrase aloud, you need to pick one of its six different meanings, but don’t tell your listener which meaning you intend to convey. Next, repeat the phrase aloud, doing your best to emphasize the meaning without overexaggerating the emphasis or making it sound forced.

After you’ve repeated the phrase, ask your friend to tell you what message he or she thought you were trying to get across. Did he get it right? If so, then you’re properly emphasizing your words to convey meaning to your audience. Continue to work your way through the other variations until you’ve completed all six iterations. If your listener didn’t understand what message you were trying to convey, you need to keep practicing until you get it right before moving onto the next variation.

Your voice adds flavor and texture to your word choices. Don’t neglect the power of emphasizing words to help your audience understand your message. Practice the skill of vocal emphasis until you master it and you’ll never be misunderstood again.

Elliott Wilcox, Esq. has been an OCBA member since 2001. He limits his courtroom practice to defending drivers accused of DUI. Contact him at OrlandoDUIfirm.com or (407) DUI-HELP.



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Michael Hammond, Esq.

Do You Run Your Practice? Part 2

The purpose of this series of articles is to demonstrate that you will never be truly effective at referral-based marketing until you become effective at time management. The first article made the point that making three substantive marketing contacts a week consistently over time requires a proactive approach to time management. In our last article, we discussed how attorneys tend to approach time management either by passively responding to the demands imposed upon them by their environment – the reactive style – or by proactively creating their own work environment – the proactive style. One approach imprisons you, the other sets you free. Those who feel that they cannot control their work day, or that they are at the mercy of other people or events are operating in the reactive style. So, what are some of the practical steps attorneys can take to transition to the proactive style and away from the reactive style?

Urgent vs. Important

For most attorneys the anxiety and the urge to default to the reactive style begins first thing in the morning when they look at their own to-do list that seems to grow longer by the day. Faced with this daunting task, many attorneys will often pick an urgent, and therefore seemingly important, task that can be easily done just to knock one thing off that infernal list. Because we are not clear about our priorities, we are not certain about what is really important. We default to doing what *appears* to be the most urgent.

Urgency, however, frequently masquerades as importance. They are not the same. Just because something is urgent does not automatically make it important. Many truly important things in our lives are not urgent, demanding our immediate time and attention. Without priorities, tasks that are urgent can seem important, and then what's urgent becomes the priority. We fail to realize that having too many priorities is the same as having no priorities. We need to prioritize the important.

Triage Your To-Do List

To set priorities, triage your to-do list. Examine the tasks on your to-do list and then rank them according to their importance. The following questions will help you determine what's important. Tasks should be given the highest or "A" priority if one or more of the following qualifications are met:

- Does this task forward your long-term goals?

- Are there pending legal deadlines associated with these files?
- Are there client expectations attached to this file or matter?
- Are there cash flow needs that should dictate your next step?

Once you have identified the "A" priority tasks, look over the remaining tasks on your list and rank them as either a "B" or "C" priority according to the following guidelines:

- B priority – Tasks that do not require your unique abilities, expertise, or experience and can be delegated.
- C priority – Tasks that are not worth your abilities, expertise, and experience and should be delegated.

Prioritization

Once you have the tasks on your to-do list designated as "A," "B," or "C" priorities, delegate the "B" priority tasks and seek to eliminate as many of the non-essential "C" priority tasks as possible. Next, you can label your "A" priority tasks with a "1," "2," or "3" in the order that you should work on them. Let legal deadlines and client expectations drive your decisions here.

Once you are in the habit of triaging your tasks, you will automatically know their priority on your to-do list. This proactive, practical approach will lift you out of the reactive, catch-up game in which many attorneys find themselves.

Multi-Tasking

A hallmark of the reactive style is the habit of multi-tasking, along with a good deal of pride in the ability to multi-task. Multi-taskers routinely attempt to do many different tasks at once, which usually involve a great deal of constant stopping, starting, and shifting gears. It is not unusual to find the typical multi-tasking attorney with several layers of files open on his or her desk, while simultaneously talking on the phone, signaling to a staff member in the doorway, and realizing that he or she is late for an appointment with a client. This reactive approach can often promote a feeling of anxiety as the attorney wonders at the end of the day – or in a sleepless, stress-induced moment at 3:00 a.m. – that something important may have fallen through the cracks in the midst of all the chaos. The simple truth is that while the pace of multi-tasking may be exciting, even exhilarating at times, it is a highly inefficient way to work.

Time Blocking

Common sense tells us that setting a schedule is critical to successful, proactive time management. Time blocking is the concept of doing similar types of tasks together within the same block of time – it is the antithesis of multi-tasking. Time and motion studies over decades demonstrate that implementing time blocking will make you *four times more efficient*. Let me say that again: *four times more efficient*! Attorneys find time blocking especially helpful because they do such a wide variety of tasks at different levels of complexity. When your brain is allowed to focus on doing similar tasks together within one block of time, your efficiency increases and your productivity soars.

The Three-Part Power Block

The chief complaint of the reactive attorney and the chronic multi-tasker is, “I never have time to do *my* work!” So they end up working evenings and weekends to finally get *their* work done. The three-part power block is designed to help attorneys focus on their own production time – dedicated time for the complex, technical legal work that attorneys do – for one to three hours at the same time every day. The three-part power block is structured as follows:

- The first block of time is spent **meeting with staff**. It allows you to give direction, set priorities for the day and answer their batched questions – this could take from 10 to 30 minutes depending on the workload to be discussed.

- The second part is the power block itself and involves the attorney closing his or her door for **focused production time**. The focus is on production and nothing else. This block can last 1 to 3 hours, depending on workload.
- The third part is for **communications** – returning phone calls and responding to emails. The length of this block will vary depending upon volume and it should follow the production block.

Ideally, the power block gets scheduled in the morning before most of the challenges of the day arise and when most people report they are freshest and able to do complex work. Attorneys quickly discover that the production block is the most valuable part of their day and they begin to guard it jealously. The three-part power block imposes order on the chaos.

So now that you’ve dramatically increased your efficiency and productivity by proactively managing your time, the next time block to add to your schedule is the marketing block to ensure that you are scheduled to make your three marketing contacts each and every week. Remember, you will not be as effective as you can be at marketing until you’re effective at time management.

Michael Hammond, Esq., is a “founding father” of Atticus and is a Certified Practice Advisor. He has a depth of experience in lawyer marketing, one-on-one business coaching, and strategic planning. For details, go to Atticus online at www.atticusonline.com, or call 888-644-0022.

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Save the Dates! OCBA Social Committee Events 2014-2015

Aug. 21, 2014 – Summer Happy Hour & Trivia Contest
Harry Buffalo

Oct. 19, 2014 – Scares & Spares Halloween Bowling Party

Nov. 20, 2014 – Voluntary Bars Joint Happy Hour

Nov. 2014 – Orlando Magic Night!

Jan. 22, 2015 – Winter Wine & Cheese Social

Feb. 2015 – Cars & Coffee Event

Mar. or Apr. 2015 – Texas Hold 'em Charity Poker
Tournament & Happy Hour

May 2, 2015 – Law Week Inaugural 5k Run

All proceeds benefit the OCBA Foundation, Inc.

See the OCBA website and *The Briefs* for updates!

Associate

Amanda E. Wright, Esq. – *The Dill Law Group*

Partner

Marilyn G. Moran, Esq. – *FordHarrison, LLP*

Teresa A. Herrmann, Esq. – *Jill S. Schwartz & Associates, P.A.*

Speaking Engagements

Christopher E. Brown, Esq., and **Lance O. Leider, Esq.,** attorneys with The Health Law Firm, held a seminar for Florida Hospital family medicine residents and medical students at Florida Hospital Winter Park in May. The seminar focused on contracting for physicians and health professionals, primarily by discussing physician employment agreements.

Events

July 16 – YLS Annual Young Lawyers & Law Clerks Reception. 6:00 p.m.-8:00 p.m. Orange County Regional History Center, 65 E. Central Blvd., Orlando, FL 32801.

Aug. 5 – YLS Backpack Project Happy Hour. 5:30 p.m. - 7:30 p.m. KASA, 183 S. Orange Ave., Orlando, FL 32801. Contact: Alisia Adamson, Esq. at aadamson@hawmlaw.com.

Aug. 21 – Summer Happy Hour & Trivia Contest. 5:30 p.m. Harry Buffalo, 129 W Church St, Orlando, FL 32801

Seminars

July 8 – Defense to Debt Collection Cases. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Recreation Complex, 99 E. Marks St. Orlando, FL 32803. CLE: pending. See OCBA web calendar for details. To register, contact Marilyn Carbo at mcargo@legalaidocba.org

July 10 – Topics of Interest to Anyone Who Handles Social Security Disability Claims. Social Security Committee **Major Seminar.** 12:30 p.m.-5:00 p.m. OCBA Center. CLE: pending. Speakers: Walter Hnot, Esq.; Paul Morgan, Esq.; Richard A. Culbertson, Esq.; Hon. Barry LaBoda, Administrative Law Judge; Shea Fugate, Esq.; Sarah Fay, Esq. Cost: \$45 for OCBA members; \$55 for non-members. Registration deadline: July 8, 2014. Register at the OCBA Store.

July 15 – Computer Forensic and e-Discovery for Today's Legal Society. Paralegal Section Seminar. 11:45 a.m.-1:00 p.m. OCBA Center. CLE: 1.0. Speaker: Trent Walton, Chief Technology Officer, US Legal Support. To register, see Paralegal Section page on OCBA website.

July 17 – Computer Forensics: Behind the Curtain. Technology Committee Seminar. 11:30 a.m.-1:00 p.m. OCBA Center. CLE: 1.5 (including .5 Ethics): pending. Luncheon seminar sponsored by and presented by RICOH. Speaker: David Greetham, National Director of Forensic Services, Ricoh Legal. Cost: Free for OCBA members; \$15 for non-members. Registration deadline: July 14, 2014. Register at the OCBA Store.

July 18 – Your Family and Your Practice: Tips to Balance the Two. Brown Bag Lunch with Judge John Kest. 12:00 p.m.-1:15 p.m. Orange County Courthouse, Jury Assembly Rm., 425 N. Orange Ave., Orlando, FL 32801. CLE: 1.5. This will also be Judge Kest's annual ice cream cone social. To register, contact Diane Iacone at ctjadi1@ocnjcc.org, or 407-836-0443.

July 22 – Securing Appropriate Psychotropic Medication and Enhanced Placement for Youth with Mental Health Needs: A Step-By-Step Guide. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks St. Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. CLE: pending. See OCBA web calendar for details. To register, contact Marilyn Carbo at mcargo@legalaid-ocba.org.

July 31 – Internal Threat – Beware of the Enemy Within. Seminar presented and sponsored by DIRIGA. 11:30 a.m.-1:00 p.m. OCBA Center. CLE: none. Lunch will be provided. See OCBA website for details.

Aug. 1 – New Lawyer Training Program – Day One. 8:00 a.m.-7:00 p.m. OCBA Center, 880 N. Orange Ave., Orlando, FL 32801. Registration deadline: July 15, 2014. See OCBA website for details.

Aug. 2 – New Lawyer Training Program – Day Two. 8:00 a.m. - 5:00 p.m. OCBA Center, 880 N. Orange Ave., Orlando, FL 32801. Registration deadline: July 15, 2014. See OCBA Website for details.

Aug. 5 – GAL 101: Best Interest Advocacy In and Out of Court. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks Street Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. CLE: pending. See OCBA web calendar for details. Contact: Marilyn Carbo at mcargo@legalaidocba.org.

Aug. 14 – Daubert – Handling the Daubert Hearing. Brown Bag Lunch with Judge John Kest. 12:00 p.m.-1:15 p.m. CLE: 1.5. Orange County Courthouse, 23rd Flr. Judicial Conf. Rm., 425 N. Orange Ave., Orlando, FL 32801. Please feel free to bring a sandwich; water will be provided. To register, contact: Diane Iacone at ctjadi1@ocnjcc.org, or 407-836-0443.

Aug. 14 – Civility Matters. Professionalism Committee & ABO-TA Joint Seminar. 3:30 p.m.-5:00 p.m. OCBA Center. CLE: 1.0. Cost: Free for OCBA members; \$15 for non-members. Registration deadline: August 12, 2014. Register at the OCBA Store.

Aug. 19 – Paving the Road to Permanency In and Out of Dependency Court. LAS Lunchtime Training. 12:00 p.m.-1:30 p.m. Marks Street Senior Recreation Complex, 99 E. Marks St., Orlando, FL 32803. CLE: pending. See OCBA web calendar for details. Contact: Marilyn Carbo at mcargo@legalaidocba.org.

Aug. 28 – Paralegal Section Seminar. Topic: TBA. 11:45 a.m.-1:00 p.m. OCBA Center. More details will be available on Paralegal Section webpage.

A n n o u n c e m e n t s

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OCBA Calendar

JULY – AUGUST

OCBA July Luncheon

July 24, 2014

Co-hosted by Tiger Bay Club of Central Florida

Ninth Judicial Circuit & County Candidates Forum

RSVP by July 18, 2014 to

www.orangecountybar.org/products/luncheons

July

- 1 Professionalism Committee**
12:00 p.m. • OCBA Center
- 2 Business Law Committee**
12:00 p.m. • OCBA Center
- 3 ADR Committee**
12:00 p.m. • OCBA Center
- 4 Independence Day**
OCBA Office Closed
- 8 LAS Lunchtime Training**
Defense to Debt Collection Cases
12:00 p.m. • Marks St. Senior Center
- Intellectual Property Committee**
12:00 p.m. • OCBA Center
- 9 Lawyers' Literary Society**
12:00 p.m. • OCBA Center
- OCBA Executive Committee**
4:30 p.m. • OCBA Center
- 10 Social Security Committee Major Seminar**
Topics of Interest to Anyone Who Handles Social Security Disability Cases
12:30 p.m. • OCBA Center
- 11 Criminal Law Committee**
12:00 p.m. • OCBA Center
- 14 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 15 Paralegal Section Seminar**
Computer Forensics and e-Discovery in Today's Legal Society
11:45 a.m. • OCBA Center
- 16 Elder Law Committee**
12:00 p.m. • OCBA Center
- Young Lawyers & Law Clerks Reception**
6:00 p.m. • Orange County Regional History Center
- 17 Technology Committee Seminar**
Computer Forensics: Behind the Curtain
12:00 p.m. • OCBA Center
- 18 YLS Luncheon**
11:30 a.m. • Citrus Club
- Brown Bag Lunch with Judge John Kest**
Your Family and Your Practice: Tips to Balance the Two
12:00 p.m. • Orange County Courthouse, 23rd Flr. Judicial Conf. Rm.
- 22 Real Property Committee**
12:00 p.m. • OCBA Center
- LAS Lunchtime Training**
Securing Appropriate Psychotropic Medication and Enhanced Placement for Mental Health Needs: A Step-By-Step Guide
12:00 p.m. • Marks St. Senior Center
- 23 Intellectual Property Committee**
12:00 p.m. • OCBA Center
- 24 OCBA Luncheon**
Judicial Candidates Forum
11:30 p.m. • Church Street Ballroom
- 25 Bankruptcy Law Committee**
12:00 p.m. • OCBA Center
- 29 Solo & Small Firm Committee**
12:00 p.m. • OCBA Center
- 30 Paralegal Section Membership Meeting**
11:45 a.m. • OCBA Center
- 31 Seminar Sponsored by DIRIGA**
Internal Threat – Beware of the Enemy Within
11:30 a.m. • OCBA Center
- Appellate Practice Committee**
5:30 p.m. • Wildside BBQ Bar & Grill, Thornton Park

August

- 1 New Lawyer Training – Day One**
8:00 a.m. • OCBA Center
- 2 New Lawyer Training – Day Two**
8:00 a.m. • OCBA Center
- 5 Professionalism Committee**
12:00 p.m. • OCBA Center
- LAS Lunchtime Training**
GAL 101: Best Interest Advocacy In and Out of Court
12:00 p.m. • Marks St. Senior Center
- YLS Backpack Project Happy Hour**
5:30 p.m. • KASA
- 6 Business Law Committee**
12:00 p.m. • OCBA Center
- 8 Criminal Law Committee**
12:00 p.m. • OCBA Center
- 11 Estate, Guardianship & Trust Committee**
12:00 p.m. • OCBA Center
- 12 Intellectual Property Committee**
12:00 p.m. • OCBA Center
- 13 Lawyers' Literary Society**
12:00 p.m. • OCBA Center
- Veterans Committee**
12:00 p.m. • OCBA Center
- OCBA Executive Council Meeting**
4:30 p.m. • OCBA Center
- 14 Brown Bag Lunch with Judge John Kest**
Daubert – Handling the Daubert Hearing
12:00 p.m. • Orange County Courthouse, 23rd Flr. Judicial Conf. Rm.
- Professionalism Committee & ABOTA Seminar**
Civility Matters
3:30 p.m. • OCBA Center
- 15 YLS Luncheon**
11:40 a.m. • Citrus Club
- Family Law Committee**
12:00 p.m. • OCBA Center
- 19 Solo & Small Firm Committee**
12:00 p.m. • OCBA Center
- LAS Lunchtime Training**
Paving the Road to Permanency In and Out of Dependency Court
12:00 p.m. • Marks St. Senior Center
- 20 Elder Law Committee**
12:00 p.m. • OCBA Center
- 21 OCBA Bar Luncheon**
11:30 a.m. • Church Street Ballroom
- Summer Happy Hour & Trivia Contest**
5:30 p.m. • Harry Buffalo
- 26 Real Property Committee**
12:00 p.m. • OCBA Center
- 28 Paralegal Section Seminar**
11:30 a.m. • OCBA Center
- 29 Bankruptcy Law Committee**
12:00 p.m. • OCBA Center