

Woman of Achievement • Freddie Springfield



Congratulations to Freddie Springfield! Freddie was honored as a Woman of Achievement by the Elyria YWCA on November 12, 2013 at a luncheon attended by over 300 people. Sixteen women were nominated for their work in business, government, education, medicine and service and Freddie was one of three chosen for the award.

In her nomination of Freddie, Mona Atley wrote, “Attorney Freddie Springfield is an exemplary model of a servant, leader, a mother, mentor, a well-respected and most admired professional and very personable refined woman and a friend to many across the nation. Most who know Attorney Springfield can attest that she has a compassionate heart of gold; she genuinely cares about the well-being of others and works consistently to bring people together.”

Freddie has been very active in our community. She has served on numerous boards, including the Lorain County Community Action Agency, Lorain County Urban League, Leadership Lorain County, the Elyria YWCA, the Community Foundation of Lorain County, and the EMH Regional Medical Center Foundation.

Freddie received her JD from Cleveland Marshall in 1980 and served as in-house counsel (part-time) for Barden Communications in Lorain, Ohio, from 1981 to 1984. During that time she also served as a part-time law clerk for Lorain County Common Pleas Judge Joseph Cirigliano. She had her own practice from 1984 through 1998. In 1998 she joined the Cuyahoga County Prosecutor’s Office as an Assistant Prosecuting Attorney until 2002 when she joined the Lorain County Prosecutor's office.

Save The Date!

LCBA Foundation's

Mardi Gras Charity Ball

March 22, 2014

Formerly the
Valentine's Day Ball

A decorative graphic for a Mardi Gras event. It features a purple background with two ornate masks: one is gold and black, the other is blue and gold. In the foreground, there are several strands of Mardi Gras beads in green, purple, and gold.

President's Message • Barbara Aquilla Butler

Now that the Holidays are over, what is happening at the Bar Association? So glad you asked!

NEW BUSINESS OPPORTUNITIES/MARKETING: It is that time to re-up for the LCBA Lawyer Referral Service. Applications were sent out on January 3, 2014. If you need one, please contact Jeannie or Tammie at the Bar Association. Over 1,200 referrals to attorneys were made to participating attorneys last year alone. Those who cannot afford representation are sent to the pro bono panel or placed on a waiting list. Others are funneled into our new modest means programs for Domestic Relations and foreclosure defense. The LRS is for paying clients and personally speaking I have received some nice referrals from the program.

COMMUNITY OUTREACH: Thank you to all who participated in the community out-reach program with Friends of The APL and to Andrea Kryszak for putting the program together for us. For those of you who have more of an interest in helping humans instead of animals, you are in luck. St. Mary's Food Pantry in Lorain, Ohio is the next scheduled community out-reach program. On the 4th Sunday of every month, volunteers assist with stocking all the shelves of the food pantry with all of the donations. The following Monday from 4-7, residents are able to come in and obtain food and toiletries from the pantry. The LCBA is going to volunteer to assist the Pantry in February (2/24 & 2/25). You can either volunteer for Sunday set-up, Monday distribution, or make a monetary or product donation. The pantry can always use staples of mac & cheese, peanut butter, Chef Boy R D, cereal, granola bars, etc. Toiletries they need are soap, shampoo, razors, deodorant, tooth paste and tooth brushes.

At Jennifer Riedthaler-Williams' recommendation, we would like to add diapers to their usual toiletry section of the pantry. So please bring in diapers of all sizes. Watch your e-mail or contact the Bar Association for details. You can bring a donation in lieu of showing up, you can just show up, or you can do both. Donations can be dropped off at the LCBA office prior to the day of the event or just bring them to the event. Please call to tell us whether you will be volunteering.

FUN/NETWORKING: Thanks to all those who came to the Winking Lizard Tavern on December 13, 2013. It was a great chance to force myself to relax for a couple hours during all the holiday stress and end of year client wind-up. It was fun. For those of you who missed the boat, there is a Bowling night social at Brunswick lanes on Friday February 7, 2014 starting at 5:30. Come and network or just hang out with other members. Families are welcome and even encouraged with bumper bowling available. Hope to see you and meet some of your families that night. You are also probably wondering why you have not received notice of the Valentine's Ball date, that is because we have moved it to March so we can stop competing with other non-profit balls and fundraisers traditionally held in February. The Ball will still be a Charity Ball with all the live entertainment, games of chance, and fun, but it will also include an award ceremony for members. There will be a Lifetime Achievement Award, a Member of the Year Award, and an award to a person, either lawyer or non-lawyer in our community for the Courage Award. The criteria and the nomination forms will be circulated to the members via e-mail at the end of January early February. Winners will be announced in late February and all awards will be provided to the recipients at the Charity Ball. Please take the time to fill out the nomination form for one of your colleagues who you feel truly deserves some recognition. That is the whole point of the program!

SPECIAL THANKS: Special Thanks to Daniel Cook and Stephen Meckler for your years of service and dedication to the Bar Association through your service on the Legal Ethics & Grievance Committee. Your commitment to the Bar and your countless uncompensated hours of service on the Committee has been such an asset to the LCBA and the Legal Profession in Lorain County. Thank you. Although you are subject to term limits due to the new Supreme Court Rules, we hope that you consider joining forces again with our Committee in the future. We also welcome Margaret O'Bryon and Allison Manning to the Committee and we look forward to working with them on their tour of duty. Thank you for your willingness to participate.

Also a special thank you goes out to Judge Bilancini for your participation in our Off the Record Breakfast Series which took place on January 10, 2014. It was a great open and relaxed dialogue with the Judge which was both informative and productive.

Thank for being one of the few who actually read the President's Message and make it a great day.

Six months down, and six to go.



2014: Gideon Or The Green?

(Pending Legislation Could Dramatically Effect the Practice of Criminal Law in Lorain County)

By J. Anthony Rich¹

A few short years ago almost every Lorain County Courthouse was abuzz with growing concern over a local inquiry and proposal to possibly establish a Public Defender's Office for indigent defense. The proposal was ultimately rejected for several reasons, including but not limited to, the extremely low amount of funding and resources that were to be allocated to ensure our county's compliance with the 6th Amendment Right to Counsel. This time around, the debate and decisions are statewide, and are thus taking place out of our jurisdiction, and directly in the State Capital. If ultimately passed, in anyway shape or form, SB 139 (Senator Ueker) and HB 186 (Representative Boose) (hereinafter jointly referred to as HB 186) would have a dramatic impact upon the practice and administration of indigent Criminal Defense cases in Lorain County. Although the bills were never called for reading during the last General Assembly, debates, proposals and counterproposals about indigent defense reform and funding will surely be a topic revisited in 2014.

Approximately 70% of criminal defendants statewide are indigent and those cases are handled by either public defenders or private court appointed attorneys. Twenty-nine and a half counties have Public Defender Offices. Eight and a half counties have contracts with non-profit organizations handling the cases. Eleven counties are handled by the Ohio Public Defender's Office and thirty-nine counties use the court-appointed counsel procedure, which includes Lorain. Lorain County happens to be the largest County in Ohio not serviced by a Public Defender.² As such, Lorain County practitioners, be it Judges, Prosecutors or Defense Counsel need to be keenly aware of what is being proposed in Columbus and the subsequent game changing ramifications passage would have on our local practice.

The current version of HB 186 does not specifically address what procedural changes or new rules would specifically rectify current problems identified in the current court appointed system. The bill itself contains only vague references as to speculative types of rules that 'could' later be enacted. Language concerning hourly rates, case caps, and electronic filing is the only added language that varies from the existing statute.³ According to Tim Young, Ohio's Public Defender, details regarding the establishment of guidelines that will correct the problems would be developed at a later date by the Public Defender Commission in conjunction with the OPD. These new regulations would then be placed into effect via the administrative code. In essence, HB 186 would centralize control over all indigent defense with the OPD. Most significantly, that means the Ohio Public Defender would have the exclusive and unfettered power to determine the system of indigent defense for all 88 counties in Ohio.⁴

Currently, the decision is made on a county-by-county basis by the respective county government; in our case, Lorain County Commissioners. The centralization is further accomplished by transferring responsibility for the cost of indigent defense from the counties to the OPD. After a phase-in process of 6 years, the State through OPD would be entirely responsible for cost of indigent defense and the counties would no longer bare any of the cost (except for 50% in capital cases). This aspect of the bill (cost savings) is obviously very attractive to certain County Commissioners who are more concerned with current finances than the constitutional duty to assure adequate protection and representation for indigent persons. As an example, since 2005, Lorain County has spent approximately

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\$14,426,434.00 on indigent defense and has only been reimbursed \$4,521,479.00, which equates to slightly more than 31%. If reimbursed at a rate of 50% by the State, the County would have received over \$3,000,000.00 (three million dollars) more. Money they will argue that could be used to provide other 'more important' county services.

Missing from HB 186; however, is any discussion concerning future guaranteed funding. This discussion should be paramount to ensure Ohio's compliance with the federal constitutional duty to adequately fund indigent defense. Under this bill, the State would bear the full cost of all indigent representation throughout Ohio, by funding the OPD, who would then in turn, issue payments. There is currently no guarantee of a specific identifiable funding source, or any express assurances that future spending on indigent defense would, at a minimum, even remain, at the current level.

Again, if passed, HB 186 would allow the OPD to replace the court appointed system with a Public Defender Office in any county. Further, one of the primary stated purposes of the legislation is to permit the OPD to create District Public Defender Offices. As it is believed financial concerns and savings will be the driving factor in the selection of which counties would become Public Defender controlled counties, it logically flows that counties with the highest level of court appointed expenditures, would thus most likely be replaced by Public Defender Offices. The Ohio Public Defender has indicated that there are several counties that currently are at, or near, the proverbial 'tipping point' for conversion to a Public Defender Office. There is further indication that any County raising fee caps or appointed hourly rates would likely shift the economic structure of many of these 'tipping point' counties, to outright require the establishment of a local Public Defender Office in said county.

In closing, it should appear obvious to the reader that Lorain County is clearly ripe for a Public Defender's Office should either the current legislation or later amended legislation eventually pass. As such, it is imperative that each individual practitioner remain privy to any changes in the proposed language and then be further prepared to learnedly address the pros and cons of the legislation when the time comes to contact your individual representatives. Although there are clear benefits in having a centralized set of standards, fees and requirements for those practicing in indigent defense, which is a method endorsed by the American Bar Association, National Association of Criminal Defense Lawyers and Ohio Association of Criminal Defense Lawyers, nobody is convinced that handing over all of the decision making process and power to one person alone, i.e., the Ohio Public Defender, is in anyone's best interest. Stay tuned!

**A Special thank you to Columbus Attorney Sarah Schregardus, Legislative Co-chairperson of the Ohio Association of Criminal Defense Lawyers who previously compiled and organized several components of the data herein for further analysis.

FINAL NOTE: To date, the Lorain County Criminal Law Section, has voiced a clear opposition to the legislation as the current legislation is 1) premised upon a basic presumption that the court appointed system is inherently fundamentally flawed; 2) a grave concern that a Public Defender's Office could not provide comparable services for indigent defendants for the rates, numbers and resources previously articulated in prior studies and proposals. The Criminal Law Section also opposes any legislation that is being sold to State legislators as a 'costs savings' measure, especially since Lorain County court appointed lawyers have been paid at the same rate for almost a quarter century.

If you would like more information or have any questions on this issue, please feel free to contact Attorney J. Anthony Rich (440-245-2274 or anthony@janthonyrich.com). Furthermore, and more importantly, each member, either for or against, should contact their respective State legislators as this is now a statewide issue.

¹J. Anthony Rich is a sole-practitioner in Lorain County. He is the current President of the Ohio Association of Criminal Defense Lawyers and Co-chairperson of the Lorain County Bar Association's Criminal Law Section. He additionally serves on the LCBA's Ethics and Grievances Committee and is Acting Judge in Lorain Municipal Court.

²See: <http://www.opd.ohio.gov/CountyPD/CountyPD.htm>

³See O.R.C. 120.04

⁴ Section 120.04 (B) (13) and 120.33 (A).



New Year Brings Several Rule Changes

By Bret Crow

As the New Year begins, judges and lawyers should take note of several new rules that took effect Wednesday, January 1.

Attorneys and judges will benefit from significant continuing legal education (CLE) changes. The Supreme Court adopted changes in October 2012 to double the number of online credit hours attorneys could earn, to allow attorneys to earn a portion of their CLE hours by engaging in approved pro bono activities, and to eliminate the requirement to file final reporting transcripts.

The annual registration fee for out-of-state attorneys seeking to register for pro hac vice in Ohio increases from \$100 to \$150, and the admission without examination fee for out-of-state attorneys increases from \$1,250 to \$1,500. The increased fees for out-of-state attorneys do not affect the current biennial attorney registration fee paid by Ohio attorneys. The rule changes also provide that all revenue from the pro hac vice registration fee will go into the Admissions Fund instead of the Attorney Services Fund where the monies were previously deposited.

The Supreme Court adopted a new rule and form to implement a new statutory requirement that Ohio's courts notify police about violent offenders with a mental illness. Rule 95 and Form 95 to the Rules of Superintendence for the Courts of Ohio were recommended by a workgroup of law enforcement and judicial representatives convened by the Supreme Court after a change in Ohio law that requires judges to report to law enforcement when they order a mental-health evaluation or treatment for a person convicted of an offense of violence, or if they approve a conditional release for someone found incompetent to stand trial or not guilty by reason of insanity.

Amendments adopted to the Ohio Traffic Rules would facilitate the use of electronic tickets by law enforcement. Traf.R. 3 (F) also would clarify that a defendant's signature isn't necessary on an electronically produced ticket.

Mental Illness Reporting Tool Ready for Ohio Courts

By Stephanie Beougher

A new rule approved by the Ohio Supreme Court took effect on January 1 requiring Ohio's courts to notify police about violent offenders with a mental illness.

Rule 95 and Form 95 to the Rules of Superintendence for the Courts of Ohio was recommended by a workgroup of law enforcement and judicial representatives convened by the Supreme Court after a change in Ohio law that requires judges to report to law enforcement when they order a mental-health evaluation or treatment for a person convicted of an offense of violence, or if they approve a conditional release for someone found incompetent to stand trial or not guilty by reason of insanity.

Known as the Deputy Suzanne Hopper Act, the legislation was introduced after the Clark County Sheriff's deputy was killed in 2011 by a man with a criminal history who had been conditionally released from a mental health institution. Before the legislation, no readily available database existed to alert law enforcement about an offender's mental health history.

After public comment, the Supreme Court made substantive and non-substantive modifications to Rule 95 and Form 95, including:

Directing courts to 'submit' rather than 'file' Form 95 with law enforcement so that a signature is not required on the form submitted to law enforcement for entry into the National Crime Information Center (NCIC) Supervised Release file maintained by the FBI.

Clarifying that the 'point of contact' at the court does not necessarily have supervisory responsibility over the defendant, yet he or she is the designated point of contact for the subjects of Form 95.

Adding clarifications or explanations into the form so that a separate instruction form is not needed.

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Proposed Supreme Court Rule Changes Involve Accelerated Joint Bachelor's/Law Degree Programs

By Bret Crow

Proposed Ohio Supreme Court rule amendments could open the door for colleges and universities to offer joint "3+3" bachelor's/law degree programs.

More college freshmen who intend to become lawyers may be able to reach their goal one year sooner if proposed rule amendments announced today by the Ohio Supreme Court are adopted.

Ohio's law school deans asked the Supreme Court to consider allowing applicants to apply for the bar exam after graduating from a six-year joint bachelor's/law degree program instead of the traditional seven-year program (four years of undergraduate study, plus three years of law school).

Under the amendments to Rule I of the Supreme Court Rules for the Government of the Bar of Ohio, applicants for admission to the practice of law in Ohio would only be required to obtain a bachelor's degree from an accredited college or university before admission to the practice of law rather than before admission to law school.

As it stands now, bar exam applicants who graduate from a '3+3' program must seek a waiver of the rule in order to sit for the exam, according to Lee Ann Ward, director of the Office of Bar Admissions at the Supreme Court.

The Supreme Court alerted Ohio college and university presidents to the proposal in a letter and noted that the decision whether to offer a 3+3 program lies with Ohio's law schools, colleges, and universities. The 'proposal would only allow for the possibility of 3+3 Programs' since no law school offers one currently. 'Thus, creation of the 3+3 Programs is ultimately dependent upon the educational community's desire to establish such programs.'

January 22, 2014 was the deadline to submit public comments on the proposed amendments.



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Expect More!

My Trip to China to Study Long Term Care and Legal Systems

By Gayle A. Reeves

As a member of the National Academy of Elder Law Attorneys (NAELA) delegation, I traveled to China in December 2013 with a group of 9 attorneys, who are NAELA members. We were accompanied by 5 guests, including my husband and 14 year old son. The purpose of our trip was to study the long term care and legal systems in China. The trip went well beyond my expectations from both a professional and cultural perspective. We not only met with government and party officials, but with a private practice attorney, and a village dispute resolution committee.

In order to become an attorney in China a person must meet 4 requirements: (1) respect the Chinese Constitution, (2) pass the bar exam, (3) have 1 year of legal training, and (4) have a law degree. There are 120,000 registered lawyers in China. It is the job of the lawyer to support the law, not to challenge it.

The practice of law is dramatically different in China. First, there is no transparency in the Court system. The identity of Judges is not disclosed to the general public. Judgments and pending cases, though reduced to writing, are not published. The Courts are not independent of the government. Judges are government officers appointed by upper level government officials. Since they are not independent, Judges listen to what the government wants in their decision making. The Courts will always support Chinese businesses when making decisions. For instance, in order for a United States company to do business in China it must partner with a Chinese company. It is not unusual for the Chinese company to breach the contract by early termination. If the United States Company were to bring a lawsuit for breach of contract, the Courts would find in favor of the Chinese company. There are no constitutional disputes because of the requirement that a lawyer respect the Chinese Constitution. Therefore, to challenge the Constitution would result in the loss of your license to practice law.

I am sure our criminal defense attorneys would be appalled at the Chinese criminal justice system. The police have 24 hours after the arrest of a criminal to conduct a police inquiry. No one, including family members, is notified of the arrest until after this 24 hour period. There is no such thing as a right to attorney representation. During this police inquiry no physical interrogation may be conducted, but psychological inducement is common. So, a criminal may be hung up and have food withheld, but cannot be beaten. The Judge makes a decision based upon no evidence and the prosecution is always right.

I had the rare opportunity to attend a criminal trial, which was arranged through the local Xi'an bar association. Of course the trial was conducted in Chinese. It was interesting to see how accurate I was in what I thought was happening and what our interpreter told us happened after we left the Courthouse. The defendant was a 45 year old man who attempted to steal a motorbike. The bike owner and some other citizens stopped the defendant before he could ride off with the bike. The man had been in jail since September 25, 2013. His trial was held on December 13, 2013. The Judge began the trial by directly asking questions of the defendant. The prosecution then spoke directly to the Judge and asked some questions of the defendant. Defendants do not hire their own attorney. All law firms are required to provide legal aid, who are appointed by the Court as defense counsel. Defense counsel admitted that defendant stole the bike, which had a value of approximately \$540 US dollars. They also admitted that the defendant uses drugs, but does not traffic

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Meeting with Private Attorney

(drug use was not a pending charge). Defendant was facing a possible sentence of 1 to 8 months in jail. Defense counsel asked the Court to consider probation for the defendant because he had to take care of his 84 year old mother. The Court found the defendant guilty and sentenced him to 6 months in prison, without credit for time served. Yes, the Defendant will serve 9 months in jail on a charge that carries a maximum penalty of 8 months. The sentence would probably have been less except for the fact that the defendant uses drugs.

My final experience with the legal system was to meet with a village dispute resolution team. We visited a farming village of 700 residents outside the city of Xi'an. Nansuo is divided into 4 districts and the head of each district is responsible for resolving disputes within their district. The two main areas of disputes are over property lines and with the lack of care being provided to senior citizens. Sometimes the dispute resolution officer will speak to the offending party and try to convince them to correct the situation. Otherwise an informal hearing is held where each side is given an opportunity to present its point of view. The district head then makes a decision. The parties generally agree to be bound by the decision. Mainly because there isn't anything in the Chinese Court system similar to our Small Claims or Municipal Courts that would handle these types of disputes. Plus, it is very important to Chinese citizens to be well thought of and to save face. Therefore, they do not want these disputes to be public.

While I have focused on the legal aspects of my trip, I also learned a lot about the medical field and the challenges facing the Chinese government in the care of its elderly citizens.

What interested me the most were the similarities in the problems each of our countries are facing and the differences in how we are solving the problems. With a population of 1.4 billion and with about 1/3 of that population being over the age of 60, care of the elderly is a huge issue in China. This problem becomes even more overwhelming as a result of China's one child policy. There are fewer people in the work force to support the aging population in China. We have heard similar things in the United States as more and more of our baby boomers are becoming eligible for Social Security and Medicare.

The greatest challenge in China is the rapidly increasing number of elderly persons (defined as greater than 60), combined with the quickly rising number of higher aged persons. This leads to more and more people requiring more extensive care. The second greatest challenge is the lack of available resources to care for the elderly that need any care, let alone more extensive care. The existing medical facilities cannot support the current need. Chinese law puts certain restrictions on building projects that make it difficult to create

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Two Great Legal Resources Join Together To Better Serve Lorain County



Kenneth Stumphauzer

Long-time Lorain County legal advisor Kenneth Stumphauzer has joined Walter | Haverfield as the partner-in-charge of our new office in Avon.

So now Lorain County businesses get the advantage of Ken's local experience combined with the full-service capabilities of Walter | Haverfield's 60+ attorneys.

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new facilities. The law requires that any new senior care building project must be new builds; existing buildings cannot be converted to senior care. It also requires that the facility be divided into 1/3 commercial lease property (i.e. shopping), 1/3 senior apartments, and 1/3 nursing home. The facility must also have a contract with a hospital to assign a doctor and some nurses to the facility.

The most fundamental way to care for seniors is by the family. In fact, China has a law that requires children to visit and to care for their parents. If a child fails to visit or provide care for his parents he may be facing criminal penalties. There are only 42,000 nursing homes in the country. However, China's interpretation of a nursing home is akin to our independent and assisted living facilities. It does not provide any type of medical care. If someone needs extended medical care in China, they are admitted to a hospital.

One person explained to us that when his father's health declined and he needed medical care, his father was transferred to a hospital and lived there for 11 months.

Medical care in China is much different from that in the United States. Lower and middle income families do not get medical care because they cannot afford it. There are no independent insurance companies that will help pay for a person's care. China has a social insurance, but few people can afford it. In July, 2013 the Elder Law, which was first created in 1996, was revised to address some of these issues. In particular the new law provides for more government support of the elderly, both financially and medically. It encourages seniors to see doctors and provides a better reimbursement rate to the doctor. It also provides for the building of recreation, social, and nursing homes, and making them available to the seniors at a reduced price.

Medical care providers are also very different. In the United States a registered nurse is a highly trained profession, who provides many types of medical care. In China the nurse is a housekeeper. She has no medical background or training, except for basic first aid and CPR. Every doctor and nurse must be affiliated with a hospital. There are no independent practitioners or primary care physicians. The hospitals are specialized to provide treatment for a specific medical condition. You may go to one hospital for a heart condition and to another one for a respiratory condition.

I had the opportunity to speak with a variety of Chinese citizens, whom I found to be quite candid. What I discovered was that Chinese citizens greatly respect United States citizens. Some of their reasons are historical. They admire the United States because 100 years ago the United States did not take any land from China, while Great Britain and many other countries were claiming Chinese lands as their own. During World War II the United States supported China's fight against Russia and Germany to preserve China's lands and citizens. At the end of the war the United States paid money to China to build up its universities and hospitals. It also promoted the sending of Chinese students to the United States for learning opportunities. Other reasons for their respect stem from the rights and opportunities we have in the United States. Chinese citizens admire the United States for its promotion of freedom of speech and universal values around the world. Freedom of speech is particularly important to the Chinese citizens as there is no real freedom of speech in China.

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Terra Cotta Warriors and Delegation



On Steps of Courthouse with Xi'An Bar Association



Village Dispute Mediators

Chinese citizens are also keenly interested in how we have dealt with pollution. China is extremely polluted. It is common to see people wearing masks to help filter the harmful airborne particles. You may remember that China shut its factories down for up to 6 weeks before the Beijing Olympics so that the air would be clean for the athletes. We were lucky. Just prior to our trip the Shanghai airport was closed due to the high level of pollution that affected visibility. When we landed in Beijing we immediately noticed the pollution, but were lucky to have fairly blue skies during our stay. When we arrived in Xi'an our local guide exclaimed that we were fortunate to have a blue sky day. It looked cloudy and overcast to me (from pollution), but perception is based on what you are used to. A client of mine, who does a lot of business in China, told me that some people have never seen a blue sky or the sun because of the dense air pollution. Since China's pollution is worse than ours was in the early 1960's, our guide, Leonard, was keenly interested in how we solved some of our pollution problems. He also asked about United States citizens suing companies and/or the government because of contracting illnesses related to pollution. At the present time these types of lawsuits are unheard of in China.

One of the ways that China is trying to deal with its pollution is by limiting the number of cars being driven. In order to buy a car you must have a license plate. The available plates are limited within a geographic region. For instance, if you live in Beijing and want to buy a car, you will go online every month and register in a license plate lottery. If you are not chosen, you continue to register on a monthly basis until you receive the right to get a license plate. Only then may you buy a car. The last 2 digits of the license plate indicate which day of the week you are prohibited from driving your car. If you drive on the prohibited day you may be fined for each time your car is caught on camera. Leonard's wife accidentally ran errands on her prohibited day and was 'caught' 8 times. Luckily she only had to pay a maximum of 3 fines.

I will leave you with a few random thoughts that intrigued me.

While China is a communist country, its people believe whole heartedly in capitalism. There is an area in Beijing that rivals New York City's Fifth Avenue.

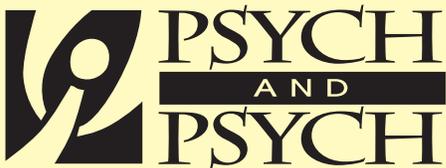
The Nansuo Village leader told us how he came to be a farmer and a painter. His father was involved with Dr. Sun Yat-sen's KMT government and did not support communism. When Mao took over, instead of killing the village head's father, Mao exiled him to a farming village, along with other educated and professional individuals. As a young boy the village leader was able to learn how to paint from artists, who had been banished to the village. That is how the village head became a farmer and an artist, who now sells his paintings worldwide.

The one child per family limitation does not apply throughout the country. Some provinces allow up to 3 children. Even if you live in a province that only permits 1 child, if you have enough money you may pay to have the second child recognized by the government and be able to attend school.

People in China have only been able to own property since 1994. Even now, a person cannot own the land, she may only own the property built upon the land.

In Tiananmen Square you will find fire extinguishers every 20 feet or so. They are available in case someone decides to set themselves on fire. When entering the Square, if you are carrying any liquid you may be asked to take a drink of it prior to entering the Square to make sure it isn't an accelerant.

As I said at the beginning of this article, my participation in this delegation exceeded my wildest expectations. I would encourage everyone who is presented with a similar opportunity to take advantage of it. While traveling to China as a tourist would have provided me with the same sightseeing opportunities, it would not have given me the heightened professional and cultural experience.



PSYCH AND PSYCH

- Depression
- Sexual Abuse
- Eating Disorders
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No Warrant, No Problem: How the Government Can Get Your Digital Data

By Theodoric Meyer and Peter Maass ProPublica, January 8, 2014

An Ohio State Highway Patrol trooper did not have a 'reasonable, articulable' suspicion to stop a Paulding County woman for a marked lanes violation. The government isn't allowed to wiretap American citizens without a warrant from a judge. But there are plenty of legal ways for law enforcement, from the local sheriff to the FBI to the Internal Revenue Service, to snoop on the digital trails you create every day. Authorities can often obtain your emails and texts by going to Google or AT&T with a simple subpoena that doesn't require showing probable cause of a crime. And recent revelations about classified National Security Agency surveillance programs show that the government is regularly sweeping up data on Americans' telephone calls and has the capability to access emails, files, online chats and other data - all under secret oversight by a special federal court.

The breadth of and justification for the surveillance are the subjects of ongoing debate in Washington. President Obama and others have defended the programs as necessary to identify terrorists and stop attacks before they happen, but privacy advocates and several U.S. lawmakers have questioned them.

Here's a look at what the government can get from you and the legal framework behind its power:
Stuff They Can Get. How They Get It. What the Law Says.

PHONE RECORDS - WHO YOU CALLED, WHEN YOU CALLED

Listening to your phone calls without a judge's warrant is illegal if you're a U.S. citizen. But police don't need a warrant - which requires showing "probable cause" of a crime - to get just the numbers for incoming and outgoing calls from phone carriers. Instead, police can get courts to sign off on a subpoena, which only requires that the data they're after is relevant to an investigation - a lesser standard of evidence. The FBI can also request a secret court order for phone records related to an international terrorism or spying investigation without showing probable cause. One such order obtained by the Guardian newspaper shows that the FBI requested all phone records over a three-month period last year from Verizon Business Network Services. Director of National Intelligence James R. Clapper said in a statement that such orders are renewed by the court every 90 days. And similar orders reportedly exist for other phone companies, including AT&T, Sprint and Bell South. The phone records being collected are for what's called 'metadata' - time, duration, numbers called - but not the content of calls, which President Obama, in defending the surveillance, said would require a judge's consent.

Police can get phone records without a warrant thanks to a 1979 Supreme Court ruling, *Smith v. Maryland*, which found that the Constitution's Fourth Amendment protection against unreasonable search and seizure doesn't apply to a list of phone numbers. The New York Times reported in 2012 that New York's police department "has quietly amassed a trove" of call records by routinely issuing subpoenas for them from phones that had been reported stolen. According to the Times, the records "could conceivably be used for any investigative purpose." The Foreign Intelligence Surveillance Act, which Congress expanded in 2001 when it passed the Patriot Act, also allows the FBI to apply for a FISA court order to get 'any tangible things (including books, records, papers, documents, and other items).' The FISA court ruled on May 24, 2006, that this provision applied to a phone company's entire call database, according to The Washington Post. (The phone companies had previously handed over the data voluntarily, the Post reported, but grew nervous after The New York Times published a story on the Bush administration's warrantless wiretapping program in 2005.) The court order for Verizon obtained by the Guardian - which covers all records from April 25 to July 19, 2013 - is much more expansive than a typical

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warrant or subpoena, said Hanni Fakhoury, a staff attorney with the Electronic Frontier Foundation. It covers 'telephone metadata - for communications (i) between the United States and abroad; or (ii) wholly within the United States, including local telephone calls.' In a statement, Clapper's office said the government can't query the metadata it has collected unless there is a 'reasonable suspicion' it is associated with a specific foreign terror group. That happened fewer than 300 times in 2012, the statement said, adding that the data is destroyed after five years. Judge Richard J. Leon of the Federal District Court for the District of Columbia ruled last month that the NSA's bulk collection of phone records likely violates the Constitution. But a second federal judge, William H. Pauley III, ruled that the collection was legal less than two weeks later, citing *Smith v. Maryland* in his opinion.

LOCATION DATA - YOUR PHONE IS A TRACKER

Many cell phone carriers provide authorities with a phone's location and may charge a fee for doing so. Cell towers track where your phone is at any moment; so can the GPS features in some smartphones. In response to a recent inquiry by Sen. Edward J. Markey, a Massachusetts Democrat, Sprint reported that it provided location data to law enforcement 67,000 times in 2012. AT&T reported receiving 77,800 requests for location data in 2012. (AT&T also said that it charges \$100 to start tracking a phone and \$25 a day to keep tracking it.) Other carriers, including T-Mobile, U.S. Cellular and Verizon, didn't specify the number of location data requests they had received or the number of times they've provided it. Internet service providers can also provide location data that tracks users via their computer's IP address - a unique number assigned to each computer. Clapper has repeatedly said the NSA does not collect location data from cell carriers under Section 215 of the Patriot Act (which is how it vacuums up other phone 'metadata'). But the NSA does gather location data on hundreds of millions of phones overseas, according to The Washington Post, including from Americans abroad.

Many courts have ruled that police don't need a warrant from a judge to get cell phone location data. They only have to show that, under the federal Electronic Communications Privacy Act (ECPA), the data contains "specific and articulable facts" related to an investigation - again, a lesser standard than probable cause. Last year, Maine became the second state, after Montana, to require police to obtain a warrant for location data; Gov. Jerry Brown of California, a Democrat, vetoed a similar measure in 2012. Sens. Patrick Leahy, a Vermont Democrat, and Mike Lee, a Utah Republican, introduced a bill last year that would have updated the ECPA but wouldn't have changed how location data is treated. Rep. Zoe Lofgren, a California Democrat, introduced a separate bill in the House that would require a warrant for location data as well as emails. Neither bill has passed. The New Jersey Supreme Court ruled last July that police needed a warrant for location data. But the United States Court of Appeals for the Fifth Circuit in New Orleans ruled weeks later that the authorities could get historical location data from cell carriers without a warrant. Two similar cases, *U.S. v. Davis* and *U.S. v. Graham*, are scheduled for oral argument before federal appeals courts in the coming months. The Supreme Court has not yet ruled on location data.

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IP ADDRESSES - WHAT COMPUTERS YOU USED

Google, Yahoo, Microsoft and other webmail providers accumulate massive amounts of data about our digital wanderings. A warrant is needed for access to some emails (see below), but not for the IP addresses of the computers used to log into your mail account or surf the Web. According to the American Civil Liberties Union, those records are kept for at least a year. The NSA also runs a program called Marina designed to sweep up Internet 'metadata,' or 'digital network information,' according to The Washington Post. Whether or not that includes IP addresses is unclear.

Police can thank *U.S. v. Forrester*, a case involving two men trying to set up a drug lab in California, for the ease of access. In the 2007 case, the government successfully argued that tracking IP addresses was no different than installing a device to track every telephone number dialed by a given phone (which is legal). Police only need a court to sign off on a subpoena certifying that the data they're after is relevant to an investigation - the same standard as for cell phone records. FISA also allows the FBI to apply for a secret court order to get 'any tangible things (including books, records, papers, documents, and other items)' relevant to an international terrorism or spying investigation.

EMAILS - MESSAGES YOU SENT MONTHS AGO

There's a double standard when it comes to email, one of the most requested types of data. A warrant generally is needed to get recent emails, but law enforcement can obtain older ones with only a subpoena. Google says it received 16,407 requests for data - including emails sent through its Gmail service - from U.S. law enforcement in 2012, and an additional 10,918 requests in the first half of 2013. Microsoft, with its Outlook and Hotmail email services, says it received 11,073 requests from U.S. law enforcement agencies in 2012, and an additional 7,014 in the first half of 2013. The company provided some customer data in 75.8 percent of the 2013 requests. (The figures don't include requests for data from Skype, which Microsoft owns.) And Yahoo says it received 12,444 such requests in the first half of 2013, providing at least some customer data in 91.6 percent of them. Google said last year that it would lobby in favor of greater protections for email. The NSA also obtains emails from companies such as Microsoft, Google, Yahoo and AOL under a program called Prism, as revealed by The Washington Post and the Guardian. Clapper has said the program does not target U.S. citizens or anyone in the country. The Post reported in October that the agency has tapped the private fiber-optic cables that connect Google and Yahoo data centers overseas to collect email metadata en masse, as well as other files. In a single 30-day period, the NSA processed 181,280,466 new records, including email metadata.

This is another area where the ECPA comes into play. The law gives greater protection to recent messages than to older ones, based on a 180-day cutoff. Only a subpoena is required for emails older than that; otherwise, a warrant is necessary. This extends to authorities beyond the FBI and the police. I.R.S. documents released by the American Civil Liberties Union suggest that the I.R.S.' Criminal Tax Division reads emails without obtaining a warrant. The ECPA update bills introduced by Leahy and Lee in the Senate and Lofgren in the House would require a warrant for the authorities to get all emails regardless of age. The Justice Department, which had objected to such a change, said last March that it doesn't any longer. Clapper has said the Prism program is legal under Section 702 of the FISA Amendments Act of 2008, which lays out how intelligence agencies may spy on non-U.S. citizens abroad. Under 'limitations,' the section says the surveillance 'may not intentionally target a United States person reasonably believed to be located outside the United States' and 'shall be conducted in a manner consistent' with the Fourth Amendment's protections against unreasonable search and seizure. The NSA's tapping of fiber-optic cables between Google and Yahoo data centers - which would be illegal inside the U.S. - is allowed overseas doesn't seem to intentionally target U.S. citizens or permanent residents.

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EMAIL DRAFTS - DRAFTS ARE DIFFERENT

Communicating through draft emails, la David Petraeus and Paula Broadwell, seems sneaky. But drafts are actually easier for investigators to get than recently sent emails because the law treats them differently.

The ECPA distinguishes between communications - emails, texts, etc. - and stored electronic data. Draft emails fall into the latter, which get less protection under the law. Authorities need only a subpoena for them. The bills introduced by Leahy and Lee in the Senate and Lofgren in the House would change that by requiring a warrant to obtain email drafts.

TEXT MESSAGES - AS WITH EMAILS, SO WITH TEXTS

Investigators need only a subpoena, not a warrant, to get text messages more than 180 days old from a cell provider - the same standard as emails. Many carriers charge authorities a fee to provide texts and other information. For texts, Sprint charges \$30, for example, while Verizon charges \$50.

The ECPA also applies to text messages, according to the EFF's Fakhoury, which is why the rules are similar to those governing emails. But the ECPA doesn't apply when it comes to actually reading texts on someone's phone rather than getting them from a carrier. State courts have split on that issue. Ohio's Supreme Court has ruled that police need a warrant to view the contents of cell phones of people who've been arrested, including texts. But the California Supreme Court has said no warrant is needed. The U.S. Supreme Court in 2010 declined to clear up the matter.

CLOUD DATA - DOCUMENTS, PHOTOS, AND OTHER STUFF STORED ONLINE

Authorities typically need only a subpoena to get data from Google Drive, Dropbox, SkyDrive and other services that allow users to store data on their servers, or 'in the cloud,' as it's known. The NSA is gathering 'stored data' from companies like Google, according to an NSA PowerPoint briefing obtained by The Washington Post and the Guardian. Clapper has said only non-U.S. citizens abroad are targeted. The agency has also tapped the fiber-optic cables linking Google and Yahoo data centers overseas. Both companies offer cloud-storage services.

The law treats cloud data the same as draft emails - authorities don't need a warrant to get it. But files that you've shared with others - say, a collaboration using Google Docs - might require a warrant under the ECPA if it's considered "communication" rather than stored data. "That's a very hard rule to apply," says Greg Nojeim, a senior counsel with the Center for Democracy & Technology. "It actually makes no sense for the way we communicate today." If cloud data is covered by FISA, which seems likely, as the law specifically states that 'documents' are included - it would let the FBI request a secret court order for data deemed relevant to international terrorism or spying investigations.

SOCIAL MEDIA - THE NEW PRIVACY FRONTIER

When it comes to sites like Facebook, Twitter and LinkedIn, the social networks' privacy policies dictate how cooperative they are in handing over users' data. Facebook says it requires a warrant from a judge to disclose a user's "messages, photos, videos, wall posts, and location information." But it will supply basic information, such as a user's email address or the IP addresses of the computers from which someone recently accessed an account, under a subpoena. Twitter has reported that it received 1,494 requests for user information from U.S. authorities in 2012, and an additional 902 in the first half of 2013. The company says it received 56 percent of the 2013 requests through subpoenas, 11 percent through other court orders, 23 percent through search warrants and 10 percent through other means. Twitter says that "non-public information about Twitter users is not released except as lawfully required by appropriate legal process such as a subpoena, court order, or other valid legal process." The NSA is also gathering data from social media from companies such as Facebook, YouTube and Paltalk as part of its Prism program, according to the NSA PowerPoint briefing. Clapper has said only non-U.S. citizens abroad are targeted.



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Off the Record Breakfasts

For the last year the LCBA has been hosting Off the Record Breakfasts with the Lorain County Judges. The breakfasts are usually held every other month on a Friday morning. The LCBA provides breakfast and the Judges provide the venue and the topics - usually general information on what is happening in their court. These breakfasts are a unique way of obtaining insight into what the judges want, what they don't want and why they do some of the things they do. You can ask non-case specific questions of the judges. It is an open dialogue in a relaxed atmosphere.

Our most recent breakfast featured Judge Darrel Bilancini of the Avon Lake Municipal Court. In order to make the breakfast more convenient for the attorneys, Judge Bilanicini held the breakfast in the visiting judge's courtroom in the Lorain County Justice Center.

If you haven't attended one of these meetings, you should consider doing so. You just might learn something; and, if not, at least you'll get a free breakfast.



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LCBA's 7th Annual Welcome Reception

On November 14, 2013, the New Lawyers Section of the LCBA hosted its Annual Welcome Reception at Cork's & Stubby's in Amherst. The event was sponsored by Wickens, Herzer, Panza, Cook & Batista and PNC Bank. Over 90 members attended the event and welcomed 9 of the lawyers admitted to practice in 2013 into our legal community. Once again, this signature event was a huge success.

We would like to thank Wickens, Herzer and PNC Bank for their continued support and generous sponsorship of this event.

Congratulations and welcome to the following newly-admitted Lorain County attorneys:

Anthony James Cox



Jonathan Khouri



Thomas DeRoma

Jeremy Frey

Nicholas Ghanma

Louis Grubbe



Jeannine Hudson

Brandon Oliver

Emily Piros

Julianne Danae Shenigo

Julia Szabo



Christopher Uhle

Shaleika Vargas

Samantha Elizabeth White

Kia Wrice



Announcements

REQUEST FOR PROPOSALS RURAL LORAIN COUNTY WATER AUTHORITY (RLCWA) LEGAL SERVICES

Notice is hereby given that sealed bids will be received at the office of the Rural Lorain County Water Authority, 42401 State Route 303, LaGrange, OH 44050 until February 19, 2014 at 11:00 AM for furnishing LEGAL SERVICES required by RLCWA during the period commencing April 1, 2014 and ending March 31, 2016. Each proposal shall include a flat monthly fee to cover attendance of one regular scheduled monthly meeting of the District Board of Trustees and to perform all of the other regular day-to-day civil law duties such as phone calls, review and/or prepare resolutions, agreements, correspondence and general review of purchases, contracts, specifications and bids. In addition to the monthly fee, each proposal shall include an hourly rate for attendance at any additional meetings and for any extraordinary services provided out of the normal course of civil law duties, including, but not limited, to representing RLCWA or its officers or employees in any civil or criminal litigation or administrative proceedings.

Nine (9) copies of the proposal marked "LEGAL" should be submitted to office of RLCWA at the address listed above.

All proposals are to be prepared at submitter's expense. RLCWA reserves the right to accept or reject any and all proposals, in whole or part, and accept any proposals which it deems favorable. RLCWA shall have no liability to any submitter whose proposal is not accepted.

BY ORDER OF THE RURAL LORAIN COUNTY WATER AUTHORITY
DISTRICT BOARD OF TRUSTEES, EXECUTIVE COMMITTEE

Congratulations to Lee Belardo - he has been a busy guy! Lee was elected as a Council-At-Large member of the Avon City Council. Later that week, Lee was also elected as President Elect of the Ohio State Bar Foundation.

Chris Cook and Wayne Nicol are pleased to announce the formation of Cook & Nicol, LLC, effective January 1, 2014. The firm is located 520 Broadway, Third Floor, Lorain, Ohio 44052; telephone 440-246-2665; fax 440-246-2670. Cook & Nicol will focus on civil litigation, domestic relations and criminal defense. In addition to Chris Cook and Wayne Nicol, Lindsey Poprocki serves as Of Counsel to the firm.

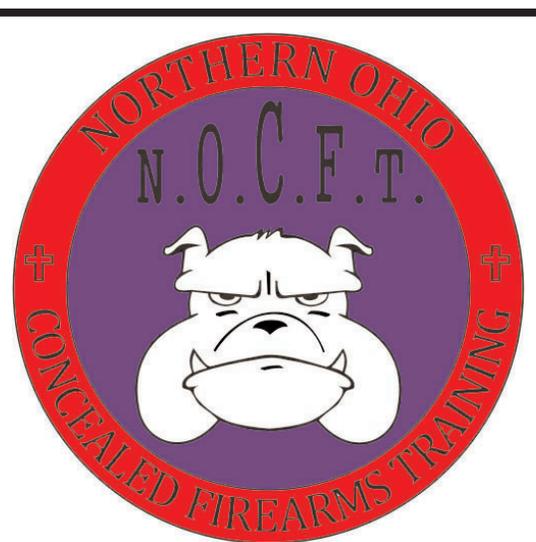
Richard J. Stahl III has been selected by the American Society of Legal Advocates (ASLA) as 'one of the Top 40 Under 40 Family Lawyers in the State of Ohio for 2014.'

Walter Haverfield, LLP has opened an office in Avon, Ohio and Attorney Kenneth Stumphauzer has joined the firm as partner in charge of that office. Also joining Stumphauzer at that office are Attorneys Susan Keating Anderson and Margaret O'Bryon. The office is located at 36711 American Way, Suite 2C, Avon, Ohio 44011. Telephone 440-652-1160.

The Brouse McDowell firm has relocated its Lorain County offices to 5321 Meadow Lane Court, Suite 7, Sheffield Village, Ohio 44035. Telephone 440-934-8080; Fax 440-934-8115; www.brouse.com

Brouse McDowell is proud to announce that Attorneys Christopher Carney and Todd Baumgartner, have been selected as 2014 Super Lawyers. Congratulations to Chris and Todd!

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Law Office Space for Rent. Downtown Elyria, on the Square. Furnished office with secretarial space included. \$400 per month. Copier Available. Contact Kenneth Lieux or Kelly Bibler at 440-323-6180.

Have an announcement you want to share with the members of the LCBA? Contact the office with the information.

If you have a change in your contact information, please let the LCBA know so that we may keep your information current.

