

Hear Me!
Hear Me!



DOCKET CALL

THE CLAY COUNTY BAR ASSOCIATION

June 2004

CALENDAR

of Upcoming Events

July 9 - 2:00 p.m.
Investiture Ceremony for
A. Rex Gabbert
Circuit Judge Division II
Clay County Courthouse
Division I

Sept. 17 - Clay County Bar Assn.
Golf Tournament
11:30 Lunch
1:00 Tee Time

Oct. 8 - Fall Luncheon
Noon
Smokehouse Barbecue

Watch your mail for details
and other events.

**Visit The Clay County Bar
Web site:**

www.claycountybar.org

This newsletter is a publication of The Clay County Bar Association. The contents are intended for general purposes only, and should not be construed as legal advice or legal opinion on any specific facts or circumstances.

Douglass F. Noland, Editor

From the President. . .

*W*ith nearly 300 members, the Clay County Bar Association is a diverse group. We come from different backgrounds, different ethnic groups and range in age from our early twenties to early eighties. We practice different religions, work in various areas of the law and have varying political views. We are physically different, male and female, tall and short, heavy and thin. But the one thing we all have in common is our freedom. With this freedom comes responsibilities. One of these responsibilities is our right to vote. While it is termed a "right," I believe it is our responsibility. I know that we are all very aware of the fact that this is an election year, having received numerous calls and/or letters requesting our financial support. While we may choose not to contribute financially, we all should participate in our democracy by voting. No matter your opinion on the issues facing America today, one way to have your voice heard is to vote for the candidate of your choice.

On a note closer to home, I know that many of you are aware of legislation that was sponsored in the Missouri House of Representatives this past session by **50** of our legislators, HJR50. This legislation proposed a constitutional amendment requiring the election of **all** Supreme Court, Court of Appeals, Circuit Court, and Associate Court Judges. While this resolution did not make it past a public hearing, and it is not on the current calendar, the fact that **50** elected officials supported this amendment should cause us all to stop and ponder this potential change. Find out how your representatives feel about this change, let them know your opinion, and most importantly when you have the opportunity to vote for the individual who most supports your opinion – take it.

Susan Long

Clay County Bar History

by William E. Shull

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YOUNG/NEW LAWYERS:

KATHRYN MILLS

The Missouri Legal Publishing Company issued the first "blue book" for Missouri lawyers back in 1935 and its contents from that year offer an interesting look into the Clay County Bar almost three-quarters of a century ago.

Just to set the stage, the year of 1935 had Guy B. Park as governor and a state Supreme Court comprised of six judges divided into two divisions. Judge William Frank was the Chief Justice. Six commissioners completed the Supreme Court bench.

The courts of appeal we called the St. Louis Court of Appeals, Kansas City Court of Appeals and the Springfield Court of Appeals. Francis Trimble of Liberty served on the Kansas City court and the marshal was George Kitchen from North Kansas City.

Clay County listed a total of 21 lawyers with offices in Clay County. Eleven practiced in Liberty, edging out Excelsior Springs which had ten lawyers. In comparison, Clinton County had a total of seventeen attorneys located in Cameron, Lathrop and Plattsburg. Ray County had twelve attorneys, all in Richmond, and Platte County reflected eight lawyers, all in Platte City.

The Blue Book for that year does not list the Clay County circuit judges except for the probate judge who was Robert Sevier. James Rooney, later to become circuit judge, was the prosecuting attorney. Frank Prewitt was the circuit clerk.

Practicing in Liberty in 1935 were L.M. Bywaters, Joseph P. Hughes, Francis Hale, Martin Lawson, John C. Loos, James S. Rooney, James W. Sandusky, James S. Simrall, Alan F. Wherritt, Conn Withers and Robert F. Sevier. In Excelsior Springs were William A. Craven, R.P. Duncan, Cooper Hockensmith, Albert C. Howard, John W. Moore, Robert H. Moore, Richard A. Moore, Samuel Rowell, Everett Sisk and Robert T. Stephens.

Only two Clay County law firms carried an advertisement in that early book and both were simple one-inch listings. The law office of James S. Simrall and his young associate, Conn Withers, had an office in the National Commercial Bank building in Liberty where they had a "general practice." The second listing was for the law firm of Moore and Moore in Excelsior Springs that touted its experience in "general practice, corporation, title examination and probate."

If you needed to contact the Moore firm, you simply picked up the telephone and dialed their number44.

IN MEMORIAM:

Max Von Erdmannsdorff

and

Leary G. Skinner

A litigation tip

Use of computers in mediation

by Douglass F. Noland

Mediation, which is becoming more and more common, is an opportunity in which all of the key players involved in a lawsuit are typically in one room trying to resolve a claim before trial. While you may think that mediation is merely just an opportunity to exchange numbers, it is more. You can continue to be an advocate for your client and present your case in a mediation session in an effective and informative way. Computer-generated presentations can outline your client's case, illustrate the strengths and expose the defendant's weaknesses, all in an effective and visual manner.

PowerPoint is an easy-to-use program which can be effectively used to communicate and present your case in a mediation.

- Photographs of damaged vehicles, injuries to your client, and scenes can be scanned and imported into PowerPoint and then presented in your slide presentation.
- Documents, collision reports, medical records, and excerpts from written deposition testimony can also be scanned and imported. You can even highlight and enlarge documents and explain with words as sign posts and use arrows or lines to draw attention to specific words or passages.
- Timelines can be created in which you can recount important events by date and time. For example, a timeline of your client's medical treatment over a period of time.
- Jury instructions and forms of verdict can also be imported into your presentation.
- You can also use a combination of tools. In a recent medical negligence case I had, fetal distress of a baby was the issue. The fetal monitoring strips were scanned and imported, and a timeline was then used as an overlay to show at precise times the levels of fetal distress. We were able to show the actual strip and time, all on one slide.
- Video clips of depositions and video statements can be imported (you will have to digitize them first) and shown as a slide. In a recent case I had taken a video statement of a doctor, then condensed it, and imported it into the presentation.
- Slides can be made that summarize facts and parties in a concise, easy-to-see and understandable form.
- Themes and points can be utilized on slides and supplemented by your own comments as you are making your presentation.

- Large amounts of information can be consolidated onto several slides. In a recent case I had, a plaintiff had numerous hospitalizations which were broken down with short slides for each hospital visit, showing the complaint and treatment.

With work, knowledge of PowerPoint, a computer and a projector, you can give opposing counsel, defendants, insurance claims representatives, and the mediator a true presentation of what your case is about and what they can expect if it goes to trial.

Future litigation tips in upcoming issues: cross examination and opening statements. If you have a litigation or practice tip you would like to submit, please send it to me. ♦

Municipal Court Update

Claycomo Municipal Court:	816-452-4539
Prosecutor Larry S. Buccero:	816-373-7766
Excelsior Springs Municipal Court:	816-630-0209
Prosecutor Peter M. Schloss:	816-792-4242
Gladstone Municipal Court:	816-436-2200
Prosecutor Douglas Wemhoff:	816-436-2200
Prosecutor Katharine Shepherd Porter:	816-436-2200
Holt Municipal Court:	816-320-3391
Prosecutor Steven D. Wolcott:	816-781-4788
Kearney Municipal Court:	816-628-4142
Prosecutor R. Brian Hall:	816-471-3414
Lawson Municipal Court:	816-580-3217
Prosecutor Thomas C. McGiffin:	816-781-1500
Liberty Municipal Court:	816-792-6004
Prosecutor Thomas C. McGiffin:	816-781-1500
Mosby Municipal Court:	816-628-4737
Prosecutor Thomas C. McGiffin:	816-781-1500
North Kansas City Municipal Court:	816-274-6007
Prosecutor Frankie J. Navratil	816-221-1750
Oakview Municipal Court:	816-436-9150
Prosecutor Stuart D. Wieland:	816-453-9529
Pleasant Valley Municipal Court:	816-792-4812
Prosecutor Steven B. Salmon:	816-453-0695
Smithville Municipal Court:	816-532-0500
Prosecutor Katharine Shepherd Porter:	816-532-0500

Collaborative what?

by Mark E. Allen and Peter M. Schloss

That's right — "Collaborative Law." What is Collaborative Law? In short, Collaborative Law is a method of handling dissolution of marriage and other family disputes in which the parties and the attorneys agree to resolve disputed issues without litigating in court. Both parties sign a binding contract to direct all of their combined energy toward the settlement of their case, and as a part of that contract, further agree that should the situation arise where the case cannot be settled, the lawyers can no longer participate or represent the parties in a litigated format.

The collaborative law concept was first developed by Stu Webb in 1991 and the first bar association group was organized in 1992 by Pauline Tesler. Since that time the collaborative law method has grown tremendously and bar organizations in at least 35 states incorporate the collaborative law method into their organizations. The state of Texas has even created a statutory recognition of collaborative law as a specialty practice. A quick browsing of the Web will now lead one to find thousands of hits on "collaborative law" in Missouri alone.

While the collaborative model for resolving family law disputes is not for every case or every practitioner, it certainly has a lot to offer many clients and practitioners alike. The advantages often cited to

the collaborative model are enhanced creativity by counsel, schedules which are determined by the parties rather than the court system and a climate of cooperation which is much less stressful than the traditional method based on an adversarial litigated trial to resolve family law disputes.

The collaborative model is not simply mediation and is not necessarily "easier." Clients who have mental illness, are dishonest, abused, etc... are probably not appropriate candidates for the collaborative method. In speaking with other attorneys and researching this area, it must be noted that there appears to be a very consistent opinion that the collabora-

"The advantages [of collaborative law] . . . are enhanced creativity by counsel, schedules which are determined by the parties rather than the court system and a climate of cooperation which is much less stressful than the traditional method . . ."

tive law practice is very fulfilling and provides a spark of creativity for many lawyers.

For those looking for more information on collaborative law, please consider reading Pauline H. Tesler's book, *Collaborative Law—Achieving Effective Resolution in Divorce Without Litigation*, or consider becoming a member of the Collaborative Law Institute of Missouri. There are already several excellent Clay County lawyers who are participating members of this group.

Please visit their website at www.collablawmo.com. ♦

Swearing-in Ceremony for Judge Gabbert July 9

Associate Circuit Judge A. Rex Gabbert was named by Governor Bob Holden as the Circuit Judge of Division 2 of the Clay County Circuit Court.

Gabbert was selected from a panel of three persons, including Douglass F. Noland and Michael E. Reardon.

Judge Gabbert's investiture ceremony will be July 9, 2004, at 2:00 p.m. at the Clay County Courthouse, Division 1. The public is invited. ♦

Bar Foundation

The Clay County Bar Foundation through its scholarship program, which is funded by generous donations from the members of The Clay County Bar Association, have awarded a total of four scholarships to area high school seniors this year.

Susan E. Long presented the scholarship to Haley Devin O'Brien, a senior from North Kansas City High School. Steven D. Wolcott presented the scholarship to Allison Elizabeth Ann Koile, a senior from Smithville High School. Douglass F. Noland presented scholarships to Brett Michael Harding and Chance Andrew Harp, seniors from Oak Park High School. ♦

CLE hours via the silver screen

by Douglass F. Noland

The reporting period for CLE hours is fast approaching, and if you find yourself short on hours, you might consider a trip to your local video store. With a few selections you can engage in not only some fine entertainment, but maybe sharpen your legal skills as well. There are many movies that have provided hours of entertainment on subjects relating to our profession and a few have provided some very good examples of trial advocacy.

For an overview of the voir dire process, consider *The Rainmaker*. Regardless of the ethical issues involved, which could be the subject of another article, view the sparring between Matt Damon and Jon Voight as they voir dire a jury panel on an insurance bad faith case. The pre-voir dire sessions, complete with pictures of prospective jurors and jury questionnaires, comes to a conclusion when Jon Voight playing defense lawyer Leo Drummond accuses a potential juror of lying and talking to the plaintiff's counsel. He then gets into a physical confrontation in the middle of the courtroom with the juror. The potential juror was excused for cause. Perhaps not your best way to select a jury, but entertaining nonetheless.

For those of you who practice criminal law, check out *My Cousin Vinny*. Who can forget the one juror's response when questioned about the role of the death penalty: "I think we ought to fry 'em." And the prosecutor's response: "She's acceptable." Or, in *A Time to Kill* when the movie shows us the potential jurors being selected and peremptory strikes being made. When the jury is finally seated, as you will remember, Samuel L. Jackson, playing the defendant Carl Lee Hailey, turns to his lawyer and says, "Is this a jury of my peers?"

For an opening statement, take a look at *Philadelphia* with Tom Hanks and Mary Steenburgen. Steenburgen plays a defense lawyer in a discrimination case and gives a riveting opening statement in which she prefaces every statement with the word "fact." I can't say that I have ever seen that done before, but it was quite effective in the movie.

We all need to sharpen our cross examination skills and what better movie for those skills than *A Few Good Men*. Tom Cruise plays Lt. Daniel Kaffee who cross examines Jack Nicholson, who plays Colonel Nathan R. Jessup. The defense was trying to establish who had

ordered a Code Red. Cruise in cross examining Nicholson gets to the riveting point of "Did you order the Code Red?" Jack Nicholson's response, standing up in Court and screaming, "You're damn right I did!" is great. Forget the line about "You can't handle the truth!" Focus on how Cruise brings the witness to an admission that concludes the case.



You might also consider *Anatomy of a Murder*. It is an old movie, still in black and white, but it has an excellent overview of a criminal trial. James Stewart plays defense lawyer Paul Biegler. He does an excellent job of cross examining a prosecutor's witness, impeaching him with his lengthy criminal record. The sparring between the simple Jimmy Stewart and the brash prosecutor played by George C. Scott is very good. The end of the movie is something that we all have probably experienced at some time in our practice. Jimmy Stewart wins the case and gets an acquittal for his client, Ben

Gazzara playing Lt. Frederick Manion. But when he goes to see him to collect his fee, Lt. Manion has skipped town.

Another example of impeachment of a witness by prior crimes is *A Time to Kill*. The defense's expert witness, Dr. Tyrell Bass, gives a great direct on the insanity defense, but is decimated on cross examination because of an undisclosed prior criminal conviction, which is artfully brought out by the prosecutor played by Kevin Spacey.

If you're really into old movies, *Witness for the Prosecution*, another black-and-white film, is a classic. Charles Laughton's cross examination of Marlene Dietrich is great. His use of looping and repetition and the use of written letters that he leaves visible on the witness stand is an example of cross examination at its best.

A Civil Action in which John Travolta plays plaintiff's lawyer Jan Schlichtmann has a great overview of a trial from beginning to end. It is particularly good on the scenes relating to depositions and how difficult witnesses, including the defendant, and lawyers are dealt with by Schlichtmann.

For closing arguments, check out *The Rainmaker*. In the movie, a young Rudy Baylor, a plaintiff's attorney played by Matt Damon, uses a video of his deceased client as part of his closing argument to let his deceased client

(continued, page 6)



Gregory Peck as the idealistic lawyer in "To Kill A Mockingbird" was the epitome of quiet courage and moral strength.

tell his story. *The Verdict* with Paul Newman is another entertaining movie. Newman plays Frank Galvin, a down-on-his-luck plaintiff's lawyer who takes on defense lawyer James Mason as Edward J. Concannon in a medical negligence case. Newman sees his case go downhill in

front of him. His expert witness falters on the witness stand, but his closing argument is riveting. He imports to the jury the importance of the trial and argues, "This is the case. There is no other case," which is a great line and charge to the jury.

To Kill a Mockingbird is a classic book that was made into a classic movie with Gregory Peck playing the character Atticus Finch. Remember in his closing argument his words to the all-white jury as he pleads for Tom Robinson's acquittal, "For God's sake, do your duty." Remember though that Atticus Finch even in losing the case, as Tom Robinson was convicted, was still given a standing ovation, at least by the people in the balcony as he left the courtroom.

For a good review of movies on objections, you might consider again *The Verdict* in which Paul Newman attempts to get in a portion of a medical record that has been altered, and James Mason's objection, and the Judge's ultimate ruling. Or in *The Rainmaker* in which a missing section of a claims manual is now produced and young Rudy Baylor struggles to try to get it into evidence and is met with numerous objections which are sustained. But then the next day after reviewing the law and a case, the Judge changes his ruling and allows the evidence in. And you can't forget the line in *My Cousin Vinny*, when Joe Pesci playing defense lawyer Vincent Gambini makes a long objection to the Court when the prosecutor is attempting to call an expert witness that hasn't been disclosed. The Judge responds by telling him that his objection is precise, articulate, coherent, well reasoned, and logical, and then promptly says, "Overruled."

You have probably seen other movies that are just as good. These are just a few. While we cannot get CLE credit as we watch our noble profession depicted on the silver screen, we can certainly be entertained and perhaps pick up a few tips as well. ♦

CLE PROGRAMS — 2003-2004

Date: July 11, 2003
Program: DNA Evidence
Missouri: 3.5 (0 ethics)
Kansas:

Date: July 18, 2003
Program: Collaborative Law
Missouri: 4.4 (0 ethics)
Kansas:

Date: February 6, 2004
Program: Probate & Estate Planning Update
Missouri: 4.6 (0 ethics)
Kansas: 4.5 (0 ethics)

Date: February 27, 2004
Program: Family Law
Missouri: 3.8 (0 ethics)
Kansas: 2.5 (0 ethics)

Date: April 26, 2004
Program: Ethics in the Legal Practice
Missouri: 4.0 (4.0 ethics)
Kansas: 4.0 (4.0 ethics)

Date: May 21, 2004
Program: Municipal Court Practice
Missouri: 4.0 (1.0 ethics)
Kansas: 4.0 (1.0 ethics)

Total Missouri Hours: 24.3 (5.0 ethics)
Total Kansas Hours: 15 (5.0 ethics)

Lawyers in the News

- Douglass F. Noland is speaking at the Association of Trial Lawyers of America (ATLA) Summer Convention in Boston, Massachusetts in July 2004 on Medical Negligence in Laparoscopic Surgical Procedures.
- James H. Thompson, Jr. spoke at the Missouri Association of Trial Attorneys (MATA) Summer Convention in June 2004 on Soft Tissue Injury Cases.
- Andrea P. Bolstad has moved. The location of Bolstad, Ruark & Sherman is 105 W. Kansas, Suite A, Liberty, MO 64068, phone 816-792-0110, fax 816-792-5151; new email address: apbolstad@sbcglobal.net. The firm lawyers are Andrea P. Bolstad, Kelly J. Ruark and Christie L. Sherman.
- Patricia D. Reynolds has relocated to 14 South Main, Liberty, Missouri 64068, phone 816-407-7774, fax 816-792-1817, and email address of yorkielaw@aol.com.