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By Josephine Bahn
A district court law clerk offers new trial lawyers advice on how to start their journey on the right foot.
Bar none, writing well is one of the most critical skills in the legal profession. Like most people, you may have struggled with various aspects of legal writing. I have always wanted to be an adept writer; I still do. So, on my journey to achieve that goal, one thing became clear to me: Editing is paramount in legal writing. As I honed certain skills and continued to cultivate others toward perfection, the editing process remained the same. Yet, editing is usually marginalized in the legal writing process. This occurs when a writer is derailed in the ebb and flow of legal writing principles or has failed to plan for the editing stage. Below are editing topics and tips to aid any writer in the legal profession.

As you scrupulously draft various documents, remember one thing—when you think you're done, you're not!

Fighting Through the Mist
It is easy to get lost in the fog of war while trying to develop a theme, organize a legal argument, incorporate style, and convey a message to the reader. It is very important when entering the legal writing project that you have a road map to direct you through the mayhem. Writing without a road map can lead to confusion in your message and, more importantly, diminish the editing process. As you create your work, ask yourself three questions: (1) what document am I writing; (2) to whom am I writing; and (3) what do I want to say to the reader?

Answering these three questions should prompt you to research. I was told by a mentor that good writing begins with good reading, and that the best way to get better at writing is to practice and emulate other good writers. I believe this is true. While researching the law to increase your legal acumen, consider perusing a small pool of well-written examples of your document. It is usually best if you already have the name of a good author in mind to minimize your example search. Also, search for works created by the reader. This will give you better insight into the reader's style and preference. Not only will you have a good model to analyze, but you will also have the reader's perspective.

Robert Graves stated, "There is no such thing as good writing. Only good rewriting." When sifting through the writing trenches, apply these strategies: First, minimize the length of your work, then minimize it again, and then minimize it a third time. Rarely is a document criticized for its brevity. The quickest way to minimize your work is to cut out adjectives and delete unnecessary sentences or words. Be concise, avoid lengthy sentences, and speak in active voice. Second, make the document easy for the reader to follow by aiding the reader with headings and subheadings to allow for skimming. Third, organize the document's structure. Consistency in the rule structure and legal rationale help maintain the organization. Fourth,
Another conflict I faced was editing as I wrote to save time on the back end. Editing as you write is a fatal mistake. It is counterproductive and leads to a loss in time, production, and frame of thought. Now I find "dumping" and a sketched outline to be helpful. I put all of my thoughts on paper to organize and edit afterwards. Editing needed its own checklist, but we are not done yet.

**A Guide to the End**
The editing stage itself requires ample focus and time. When I entered law school, I thought editing meant reviewing your work for typos and misspelled words. I quickly realized that simply reviewing your work is insufficient and that true editing required multiple rewrites. I learned the hard way, and over time I formed a practical guide with editing tips and advice to further my development.

How can you increase your rhetorical skill through practical measures to amplify your writing results? Begin with self-editing. As I stated, prior to law school, I did not do much rewriting and thus not much self-editing. Self-editing required an effort to become accustomed to it, but it is an excellent skill for anyone in the legal profession. The cost of paying a legal editor to review work is expensive and can be avoided with time and preparation. A wise mentor and judge once said, "Seeing a typo is like telling me that you were too busy to care about your work, the case, or my opinion." This can be a hard pill to swallow.

The editing process has many moving parts, and a lot takes place before there is a final product. Here are helpful editing tips I have received from professors, mentors, or colleagues:

1. **Have a completed initial draft.** Initial drafts are not meant to be perfect, but they should be completed.
2. **Create or find an edit checklist, preferably one tailored to your document.**
3. **Revise your draft at least 10 times before submission.**
4. **Print a hard copy to review your work.**
5. **Edit your final draft in sections; for example, edit all citations in the document first, then review grammar, and next review sentence structure.**
6. Use a piece of colored construction paper to review the printed document line by line to hone your focus on the isolated line. This is extremely helpful in pointing out typos, punctuation errors, word confusion, and grammar.

7. Minimize, minimize, and minimize again. It is easy to create a lengthy document, but it is much harder to create a concise work of important information.

8. Make sure you have scheduled enough time to edit your project by doubling the projected time—if a 6-page document normally requires 6 hours to complete, then schedule 12 total hours to work on that particular assignment.

A few words in closing: Strive for perfection in your writing and editing skills. In the legal profession, your work product is your livelihood. With practice and proper guidance, you will see progress.

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The Road Less Traveled—Clerking as a Mid-Level Associate

By Dani Morrison – August 30, 2017

I can still feel the phantom burden on my shoulders of the post-graduation choices I had to make 3L year. Do I go back to the firm where I summered? Do I seek out an opportunity in public interest and advocate on behalf of the underrepresented while benefitting from the student loan forgiveness program? Do I look for a judicial clerkship and continue to "hone" my legal and writing skills in an environment where I will be exposed to a myriad of issues? I felt both immobilized by indecision and the need to execute the steps necessary to pursue each option during any given moment, on any given day, throughout the fall and spring semesters of 3L year.

I entered law school as a nontraditional student. Since the age of 16, I had worked two jobs—at times, out of financial necessity and, at others, out of a pursuit of fulfillment. Over a period of 10 years, I completed my undergraduate degree in English and spent another three years obtaining my juris doctorate and master's degree in education with a certificate in disability studies from Syracuse University College of Law (SUCOL).

Although the manner in which I expected I would apply my law and master’s degrees changed throughout my law school career, the overarching goal of making the most of those three years never wavered. I formed meaningful relationships with my classmates, faculty, and administration. I competed in every oral advocacy competition that I was able to compete in, served as class president all three years, and invested in the community through service projects and pro bono work. I wanted to take advantage of every opportunity in a way I was not able to while pursuing my bachelor's degree, while also giving myself options after law school. As I entered my 3L year, I believed I had succeeded at both, but as I had heard with a significant degree of reliability, the legal field was one that was both saturated and highly competitive. I still doubted whether the "options" that I thought I had were ones that were actually within my control to choose among. Moreover, I was keenly aware of the need to determine my next steps.

Between finishing my classes, preparing for graduation and the bar exam, and managing my other extracurricular responsibilities, there were only so many hours left in the day to pursue what I considered to be my post-graduation "options." So I had to decide which path to pursue. Returning to the firm where I summered was the simplest solution, but I was not sure if it was the best fit for me.
The decision was daunting, in part, because I thought I was making a choice that would dictate the next 10 years of my life—or at least the next 1 to 2 years of my life—only to then require a decision about the next 10 years of my life. If I went the public interest route, I would need to stay in that field for at least 10 years to take advantage of the Public Service Loan Forgiveness Program. If I went into private practice, I felt I needed to be at a firm where I would want to stay for at least 10 years—the time it generally takes to make partner—and some place where I would want to work with others as a partner. If I clerked—well, I would have a year or two of reprieve, only delaying the inevitable decision of eventually still needing to choose between private or public practice. Unbeknownst to me, I had unnecessarily limited my options.

What I could not fully understand then, and frankly what I am still learning today, is that there is not a single path to success in the law. The law, like life, is about building relationships, investing in people, and being "present" enough in your current circumstance to learn and grow from the people and situations you encounter. That presence necessarily informs, colors, and changes previously defined goals and the pursuit of those goals. You do not know what you do not know, and what is originally viewed as an end point may turn out to be just a pit stop along the way to another end point.

SUCOL runs an intercollegiate appellate competition, known as Mackenzie Hughes, each year. It was the only intercollegiate oral advocacy competition I was unable to participate in as an oralist during law school. Instead, I assisted with the administration of the competition as a member of the Moot Court Honor Society Board. Each year, several distinguished judges from state and federal bars judged the competition, including a SUCOL alum, the Honorable Theodore A. McKee, former chief judge of the Third Circuit Court of Appeals. After the competition, the board members and finalists had dinner with the judges and attorneys from the firm of Mackenzie Hughes, L.L.P.

At that dinner, Judge McKee and I got to know one another. Afterward, he checked in with me from time to time, asking about my job search and whether I had any interest in a judicial clerkship. He gave me suggestions for firms to consider and put me in touch with individuals who had clerked with him over the years so that I could learn about their current positions, the paths they took to get there, and where they saw themselves in 5 to 10 years.

I later learned that while I was tailoring my cover letters to various firms and speaking with Judge McKee's former clerks, Judge McKee was speaking with my teachers and school administration about my performance in class, the oral advocacy competitions I had won, and my school and community involvement. Apparently liking what he heard, Judge McKee offered me a clerkship with him for 2019–2020. Yes, that is correct: 2019–2020, which was four years away at that point. I recall Judge McKee telling me, "I know it's several years away still and it
doesn't help you with a job after graduation, plus I may be dead by then, but if you want it, I'd be happy to have you." I immediately accepted. Here was an opportunity to apply and shape the law in one of the second-highest courts in the nation, with someone who had generously and selflessly taken a personal interest in my success. It also did not hurt that he has a decent sense of humor.

But, to Judge McKee's point, I still needed to find a job after graduation. A four-year gap in my legal résumé between graduation and my clerkship would not be good for my career and would likely decrease the value I wanted to bring to my clerkship. I was also fairly certain there was not a four-year forbearance option for student loans. By that point, however, I at least knew I wanted to work in a more metropolitan area that was closer to family, so I limited my job search to New York City, Philadelphia, and Washington, D.C. I believe in a targeted approach to a job search, so I focused my efforts on a small education law boutique firm, two general litigation boutique firms, two mid-size law firms with multiple practice areas, and a "Big Law" firm. I was invited to interview with each firm and received universal interest in my upcoming clerkship as well as a willingness to hold my position during my clerkship year. While I worked hard to build a solid résumé during law school, I know without a doubt that my clerkship added a certain je ne sais quoi to my résumé.

Now having practiced for two years, had I the ability to go back to my 2L or 3L year, I would actively seek out judicial clerkships that I could fulfill as a mid-level associate. I have a friend who is currently clerking for Judge McKee after having worked for one year in a mid-size law firm. She has told me that the year of practice she had before going into her clerkship has proved invaluable. I can only imagine how much more that will be the case after having practiced for four years. In the past two years, the amount that I have learned about the actual practice of law cannot be overstated. I have participated in a federal civil rights pro bono trial, a trial involving the federal racketeering statute, and a preliminary injunction hearing in a state court of common pleas, and I have drafted a brief to the Third Circuit. The experience base with which I will enter my clerkship is far greater than it would have been as a recent law school graduate. My summer associateships provided valuable insight into the practical side of lawyering, but it is different than the day-to-day grind of discovery, motion practice, global case strategy, and trial preparation. As a mid-level associate going into a judicial clerkship in my fourth year of practice, I will be able to better appreciate the issues I encounter and the manner in which they are presented by attorneys. I will also gain insight into the judicial process and the manner in which an experienced judge approaches those issues at a time in my career when I not only will have expanded my practical understanding of the law but will also have seven years of legal knowledge under my belt.
My path to a judicial clerkship was by no means traditional, but now that I am on it, I would have it no other way. I believe that practicing law is an art, and the people you meet along the way, the cases you try, and the clerkships you may take, all add depth, texture, and color to that practice. For me, a clerkship particularly informs that artistry, as it is the best insight one could gain into the judiciary without being a judge. I also believe a judicial clerkship after first practicing as an attorney is a path not only worthy of consideration but worthy of becoming a "traditional" pursuit.

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Summer Interns: Inspector Gadget Survival Guide
By Maritza Sanchez – August 30, 2017

The internship world is about anticipating expectations in order to be as prepared as possible to exceed them. Employers expect interns to be Inspector Gadget. The gadgets you activate are the skills you possess, those gained in law school and throughout life, including research skills, problem-solving skills, communication skills, and interpersonal skills. At all times, Inspector Gadget had the tools he needed to investigate a problem and ultimately become the hero. Like Inspector Gadget, you too possess all the skills you need to be successful during your internship. You must simply remember to activate your skills. By tapping into your skill set, you will appear to be a prepared, creative, and proactive intern. Because an internship is a summer-long interview, you should aim to be Inspector Gadget; your performance could earn you an offer, a letter of recommendation, or a mentor for life.

But it does not stop there. Employers also expect interns to be omnipresent Inspector Gadgets. Your employer might expect you to know about facts discussed in an email you never read, arguments made in a brief you did not write, or concerns expressed in a call you did not sit in on. What? Did you read that right? Yes. Your employer will expect you to be all-seeing and all-knowing. For example, your employer might give you an assignment that has been developing during the months prior to your arrival. You will be expected to know, or figure out fairly quickly, what work has been done and how that affects your current task in order to successfully complete the assignment.

The expectations set for you will not be simply related to your work performance; your employer will also expect you to activate skills related to professional etiquette, your ability to work with others, and even your appearance. I had the privilege of spending my first law school summer as a judicial intern in a U.S. district court in the Southern District of Texas. Federal courts are the epitome of professional decorum within our profession. Prior to my summer there, I knew my judge would expect a lot of me, and I was right. To sum it up, I'll use the words of one of the clerks I worked for: "You know casual Friday? Well, that does not apply to you, ever." This, along with many other expectations, was clear from day one.

Like me, some of you will intern with employers that have clear, set expectations. Others will intern with employers that appear to have no expectations of you. If the latter situation applies to you, I urge you to set your own expectations for how you will perform during your internship. An internship is a formative experience and a building block in your career path. I am a firm believer that even in positions where employers appear to have no set expectations,
they do. By setting your own expectations, you can avoid being a lax intern. You will perform better, gain more out of your experience, and impress your employer.

Knowing that you will face the high expectation of being an omnipresent Inspector Gadget, your responsibility is to prepare for your internship. Regardless of your position, anticipate expectations in order to be as prepared as possible to exceed them. Here are my suggestions:

1. **Familiarize yourself with the employer.** Learn about your employer’s primary practice area. Learn who your employer’s clients are. Learn who appears before him or her. Learn who is typically adverse to your employer. Take a class related to the practice area of your employer. Read an opinion issued by your employer. Read a brief written by your employer.

2. **Ask questions during your interview and prior to your arrival.** Ask where certain resources are. Ask your employer who are the go-to people in the office for certain tasks. Ask who in the office specializes in a particular area of the law. Shocker—you can even ask the employer what he or she recommends you do to prepare for an internship with the employer!

3. **Develop a relationship with the support staff.** They know everything. By developing a genuine and respectful relationship with a support staff member, you will receive those emails you were not cc’d on, you will be guided to that that brief you did not write, and you will be given a heads-up about important calls you should ask to participate in.

These are just some of the many things you can do to be as prepared as possible for the expectations to come. Much of your time as an intern is spent dwelling on what the internship will be, what kind of work assignments you may receive, and whether or not you will be successful. I challenge you to accept that your employer will expect you to be the omnipresent Inspector Gadget, and simply prepare for that expectation.

Last, I would like to share my top 10 points of advice to help you be the best Inspector Gadget you can be:

1. Your internship is a summer-long interview.
2. Casual moments do not apply to you.
3. Have paper and a writing utensil with you *at all times.*
4. Dress professionally even when everyone else does not. I would even venture to say do not dress casually, even if your employer allows you to dress casually. (If you don’t understand this one, refer to point 2 above).

5. Be courteous and respectful to those around you. This includes the following: opposing counsel, secretaries, and even the metal detector guards.

6. When you have the option of easily working with someone in person or by email, always choose the in-person interaction.

7. Ask at least two questions to clarify each assignment you receive.

8. Volunteer for assignments.

9. Work happens before 8 a.m. and after 5 p.m. Deal with it.

10. Send a thank-you note after your internship.

By anticipating the expectations your employer will have of you, you will be prepared to exceed them. You have all the tools you need to succeed; you must simply activate them. Go-Go Gadget!

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Combating Medical Experts in Abuse and Neglect Cases under the Juvenile Court Act

By Rachelle Hatcher and Richard E. Gutierrez – August 30, 2017

Imagine yourself a parent whose child has been seriously injured or is suffering from a medically complex condition. Your first thoughts, no doubt, turn to medical professionals and hospitals in your community, to any resource that might speed your child's recovery and rehabilitation. But spurred on by the sheer scope of reported abuse and maltreatment of children (see Angelo P. Giardino et al., "Child Abuse Pediatrics: New Specialty, Renewed Mission," 128 Pediatrics 156, 158 (2011)), as well as by media outrage over those cases (episodic and emotionally overblown though it might be (see id. at 157; Michael T. Flannery, "Munchausen Syndrome by Proxy: Broadening the Scope of Child Abuse," 28 U. Rich. L. Rev. 1175, 1178 fn. 15 (1994))), the professionals to whom you have turned may well view you first or, at the very least, in part as a suspect in your child's harm rather than a partner toward his or her recovery. If they ultimately find you culpable, moreover, it is not just the terrifying, but at least narratively familiar, world of criminal prosecution you may face. Instead, allegations of abuse or neglect may land you in the closed and confidential ambit of Child Protection Court, in a pinched and painfully one-sided battle against the state to regain custody of your son or daughter. See In re Nicholas K., 761 N.E.2d 352, 355–56 (Ill. App. Ct. 2d Dist. 2001).

Now imagine yourself an attorney called upon to represent a parent in abuse and neglect proceedings under the Juvenile Court Act. The allegations you must attack may sound in the language of criminal law, but the latter's attendant safeguards are all too often absent if you are tasked with defending a parent against, not incarceration, but the loss of the parent's children. Worse, you may ultimately square off against one of those aforementioned medical professionals: highly specialized and walled in against reproach with self-acclaim and statutory mandates as their mortar. The importance of deconstructing the defenses of these doctors (often calling themselves child abuse pediatricians) cannot be understated. And despite the procedural and practical difficulties of such an endeavor, the dedicated attorney need not be dissuaded. To that end, this article makes a humble introduction for such lawyers to the tactics and pitfalls (specific to the Juvenile Court Act and drawn generally from civil practice) of confronting child abuse pediatricians and giving parents the defense they deserve and the fighting chance at reunifying with their children they might otherwise be denied.

The Challenge: High Stakes, Minimal Protections, and Walloping CVs

Parents have a fundamental liberty interest in the care and custody of their children (Troxel v.
Granville, 530 U.S. 57 (2000)), and the damaging effects of removing young children from the care of their parents have been extensively documented. See Donald N. Duquette & Ann M. Haralambie, Child Welfare Law & Practice: Representing Children, Parents, and State Agencies in Abuse, Neglect, and Dependency Cases 79 (2d ed. 2010) (collecting studies). But although the Juvenile Court Act recognizes these concerns and mandates significant efforts to expediently reunify families (705 Ill. Comp. Stat. 405/1-2(1); In re O.S., 848 N.E.2d 130, 138 (Ill. App. Ct. 3d Dist. 2006); In re D.F., 802 N.E.2d 800, 805–6 (Ill. 2003)), it also privileges the "best interests" of minors over the rights of parents (705 Ill. Comp. Stat. 405/1-2(3)(c)) and permits the state to take custody of a minor, albeit temporarily, upon a mere showing of "probable cause" and "immediate and urgent necessity" (705 Ill. Comp. Stat. 405/2-10(2)). In the blink of an eye, therefore, parents may find themselves bereft of their children based on nothing more than the conclusory, uncorroborated, and hearsay-ridden testimony of a single investigator from the Department of Children and Family Services (DCFS). See In re I.H., 939 N.E.2d 375 (Ill. 2010) (refusing to apply evidentiary rules from elsewhere in the Juvenile Court Act to initial temporary custody hearings).

Nor do parents fare much better during adjudicatory hearings under the act, when the state must actually prove its allegations of abuse or neglect. 705 Ill. Comp. Stat. 405/2-18(1), 2-21(1). Such proceedings are civil in nature, meaning that (1) the state need only satisfy a preponderance of the evidence standard; (2) the state may force parents to testify as adverse witnesses; and (3) if parents choose to invoke their right against self-incrimination, they risk a negative inference being drawn against them. See id.; People v. Davis, 298 N.E.2d 350, 353 (Ill. App. Ct. 1st Dist. 1973); People v. Houar, 850 N.E.2d 327, 334 (Ill. App. Ct. 2d Dist. 2006). Moreover, although the corresponding rules of evidence for civil proceedings technically apply, they are relaxed. For example, the hearsay statements of minors and character evidence in the form of prior reports of abuse are admissible. 705 Ill. Comp. Stat. 2-18(3), (4)(b), (c). Finally, findings of abuse or neglect go to the child, so you may not prevail even if you can prove the parent you represent did not perpetrate the injuries or other harm suffered by his or her child. In re Arthur H., 819 N.E.2d 734, 748 (Ill. 2004).

As if all that is not enough, a significant investigatory apparatus exists to provide the state with the proof it requires, and so we come full circle back to those child abuse pediatricians. Although it is DCFS that is charged with investigating suspected abuse and neglect of minors, the department is mandated (as are the courts, for that matter) to obtain medical consultations to supplement its work. See 325 Ill. Comp. Stat. 5/7.1, 7.2, 7.3; 705 Ill. Comp. Stat. 405/2-19; Office of Inspector Gen. for DCFS, Report to the Governor and the General Assembly

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And lying in wait to provide those consultations are a myriad of specialized physicians, hospital teams, and even consulting agencies. The American Board of Pediatrics actually offers a 

**certification in child abuse pediatrics** specifically (see Giardino, *supra*, at 156), and such physicians often organize themselves into child protective services teams at hospitals, teams that cooperate extensively with DCFS and the police and (as a matter of practice) ready and train themselves to provide courtroom testimony. See 

[http://www.uchicagokidshospital.org/specialties/general-peds/child-protective-services/](http://www.uchicagokidshospital.org/specialties/general-peds/child-protective-services/); Ray E. Helfer Society, *John H. Stroger, Jr., Hospital of Cook County*; *Ann & Robert H. Lurie Children’s Hospital of Chicago*, *Protective Services Team*. Where hospitals cannot themselves support such a team of specialists, outside agencies often fill in the gaps. The Multidisciplinary Pediatric Education and Evaluation Consortium (MPEEC) was even mandated by Illinois to review all DCFS cases involving head injuries in minors under three years old, is partially funded by DCFS, and was given $3 million dollars by DCFS in 2001 to begin operations. See Giardino, *supra*, at 4–6; 


Not only are these physicians staunch and credentialed, their opinions are granted substantial weight: Some diagnoses are, by virtue of their very existence, treated as *prima facie* proof of abuse or neglect (705 Ill. Comp. Stat. 405/2-18(2)(a)–(c)), and courts are not even permitted to "second-guess" a physician's conclusions absent some other countervailing medical proof. *In re Ashley K.*, 571 N.E.2d 905, 930 (Ill. App. Ct. 1st Dist. 1991). Although case law is silent on whether a doctor's testimony might countervail itself, practically speaking, parents' attorneys must be ready not only to tear down the state's expert but to raise up their own physician in opposition. But just as the civil standards work against parents and their attorneys, so too can the expansive tools of civil discovery become their swords against child abuse pediatricians. It is to those weapons and the battle to be waged on behalf of parents that this article now turns.

**Prettrial Preparation: Building a Case and Making the State’s Burden Robust**

Seasoned civil attorneys will find discovery in child protection proceedings more treacherously lackadaisical and yet more limited than elsewhere in their practice. Upon counsel's first appearance for a parent, the state will tender minimal discovery (generally including only a packet produced by DCFS's investigator, which might or might not contain limited relevant medical records), pursuant to Circuit Court of Cook County Rule 19A.12. From there on, however, parents' attorneys should not expect the general panoply of civil discovery
conferences and tools under Illinois Supreme Court Rule 201 to make any appearance. Instead, they will receive only piecemeal records from the state until the date of a case management conference when the state will simply hand over a list of potential witnesses and exhibits and tender the discovery order to the court. Cir. Ct. of Cook Cty., Child Prot. Div., Gen. Order 09-18. Moreover, given the Juvenile Court Act's requirement that adjudication commence within 90 days of custody being taken (705 Ill. Comp. Stat. 405/2-14(b)), a trial date will likely be chosen on that conference date and come within such close proximity that counsel is practically speaking foreclosed from effectively conducting discovery of his or her own. To attack the state's case and build one of your own, you must therefore move quickly from the day you first appear to engage an available discovery apparatus that would otherwise be left rusting.

To begin, recall that the limited discovery the state will provide will not contain full medical records and that the notes of the DCFS investigator may not accurately reflect the opinions of medical personnel, police, or family members interviewed. Although much of what you must do to flesh out the gaps in what you have been tendered can occur without involvement of the state or the court, remember on your first appearance to obtain releases for the minor's records (see Stephen M. Dore, "Pretrial Issues," in Illinois Inst. for Continuing Legal Ed., Neglected, Abused, and Dependent Children, at 8.14, 8.18 (2007)) and to request permission to depose the state's expert—under at least Cook County's court rules, written discovery, but not depositions, may take place without leave of the court. Cir. Ct. of Cook Cty. R. 19A.12. With these permissions in place, you can and should engage in discovery as you otherwise would in civil practice (send interrogatories and requests to produce!), although always conscious of the more limited time frame in which to do so.

Your primary aims in discovery must be to uncover potentially exculpatory information and to develop evidence of bias (or incompetence) on the part of the state's expert. As to the first question, ensure that you obtain full records, via subpoena and without waiting for the state to supply them, from all medical providers. Even to a layperson, these records may reveal that a child's condition is due to an undiagnosed hereditary condition rather than abuse. See, e.g., James D. Anderst et al., "Evaluation for Bleeding Disorders in Suspected Child Abuse," 131 Pediatrics 1314 (2013) (noting failure to recognize blood disorders as cause for diffuse bruising in cases of suspected abuse). It is important to note that you may need multiple subpoenas sent to different departments of a provider to obtain both written records and original scans, so be proactive in contacting the hospital or clinic. You may also find that family members, if you take the time to interview them, were ignorant of the consequences of their previous statements to DCFS (and gave those statements without the benefit of an attorney). After a face-to-face, they may well take issue with the way DCFS has characterized their statements and recant or amend
them in ways beneficial to your client. As to the question of bias and competence, consider subpoenaing any and all rules, procedures, guidelines, and manuals of the MPEEC or child protective services program you are dealing with, as you may find evidence of their close-knit relationship with DCFS and the state. And ensure that when you depose the state's expert, you inquire about the limits of his or her expertise. (Did the expert actually examine the child? Does the expert specialize in diagnosing the child's specific ailment?)

Finally, having your own medical expert to consult with, or a medical expert who can offer testimony at trial, is the best course if your resources allow for it. The expert's opinion can rebut that of the state's expert and actually allow the court to rule in your favor. Look first to see if any of the minor's treating physicians disagreed with the child abuse pediatrician; you may have your own built-in expert free of charge. And remember that if you must secure a consulting expert, it will be time-consuming and difficult to find one (not to mention supplying the consulting expert with the necessary medical records to review to ensure a well-developed opinion and to protect the expert from cross-examination). So begin your search early and diligently. Look for an expert who, as opposed to the child abuse pediatrician with more general expertise, specializes in diagnosing or treating the minor's specific ailment. For example, a physician specializing in pediatric orthopedics could credibly testify that a child abuse pediatrician has seen rib fractures where in fact none exist.

**Guaranteeing Confrontation by Barring Expert Reports**

All your expansive preparations and hard-fought discovery will be for naught, however, if the state simply avoids subjecting its expert to cross-examination. Given the state's minimal burden, and especially if you have failed to procure a contrary expert, the state may well be disposed to simply proceed by way of a trial on the papers, resting on the admission of medical records containing damning reports from a child abuse pediatrician under the act's business records exception. 705 Ill. Comp. Stat. 405/2-18(4)(a). True, you can call said expert as an adverse witness regardless of the state's desires, but you may find that expert reluctant to appear unless compelled and yourself butting up against that 90-day time frame to procure that witness. All the better then if you can force the state's hand by excluding the records from evidence. Consider a filing motion for summary judgment (see *In re A.M.F.*, 726 N.E.2d 661, 665 (Ill. App. Ct. 5th Dist. 2000)) or, when dealing with often-maligned diagnoses like shaken baby syndrome (see Clyde Haberman, "[Shaken Baby Syndrome: A Diagnosis That Divides the Medical World](http://www.nytimes.com/2015/09/13/magazine/shaken-baby-syndrome-a-diagnosis-that-divides-the-medical-world.html?_r=0)" *N.Y. Times*, Sept. 13, 2015), a motion under *Frye v. United States*, 293 F. 1013 (D.C. Cir. 1923).
In that vein, the very provision that might permit the state to admit medical reports in lieu of live testimony can also be its undoing because that section, like other business records exceptions, requires that the records in question have been created in "the regular course of business." 705 Ill. Comp. Stat. 405/2-18(4)(a). Given the investigatory and ultimately court-testimony-focused approach of child abuse pediatricians, their consulting as opposed to treating role, and their intensive cooperation with DCFS, the police, and even state's attorneys, it should be easy to see how a parent's attorney could characterize the records they produce as having been created, not in the regular course of business, but in anticipation of litigation. And, in fact, the Third District of the Illinois Appellate Court in In re A.P. adopted that argument, barring from evidence records generated by physicians who did not treat the minor in question but were instead consulted by DCFS for an opinion with regard to abusive causation. See In re A.P., 965 N.E.2d 441 (Ill. App. Ct. 3d Dist. 2012). Given the brevity of its analysis, the A.P. decision offers little else beyond its holding. Lawyers can use case law interpreting other business records exceptions, specifically Illinois Supreme Court Rule 803(6) and Illinois Rule of Evidence 236(a). See In re A.B., 719 N.E.2d 348, 355 (Ill. App. Ct. 2d Dist. 1999).

A word of warning: The state will surely respond to any motion to exclude by noting the established practice of many hospitals to have minors evaluated by child abuse pediatricians, as well as the statutory mandates for medical evaluations in cases of suspected abuse. Fear not, however, because statutory mandates do not satisfy the reliability standards for business records (People v. Smith, 565 N.E.2d 900, 914–15 (Ill. 1990)), and the regular practice of hospitals will not eliminate arguments about the litigation orientation of the work of child abuse pediatricians (think, for example, of police departments whose arrest reports, though generated in the regular course of business, are necessarily created with litigation in mind). See id.; Bracey v. Herringa, 466 F.2d 702, 704 (7th Cir. 1972); United States v. Ware, 247 F.2d 698, 700 (7th Cir. 1957); Kociscak v. Kelly, 962 N.E.2d 1062, 1068 (Ill. App. Ct. 1st Dist. 2011). Last, do not neglect to remind the judge that relevant information will not be lost through the exclusion of such records; after all, you seek only that the state prove its case through the far more reliable approach of calling live witnesses subject to cross-examination.

**Praxis in Play at Trial**

When litigating a complex medical case, rebutting the opinion of the child abuse pediatrician, either through cross-examination or through your expert, must be the primary focus at trial. These doctors are extremely well trained witnesses and should not be underestimated. But they are also not infallible if you have properly prepared, as this article has laid out, to confront them.
We leave you then with just a few pointers on how to approach the day of trial: Question the pediatrician extensively about his or her lack of training and expertise in the specific areas of medicine relevant to the child's injuries. Also ask whether he or she consulted with any specialists before opining on the case. They often arrogantly deny the need to consult with specialists, and this point can expose weakness in their opinions while also enhancing your expert's qualifications. Object ferociously anytime they "parrot" or make comments beyond their area of expertise, as one expert cannot testify as to the opinions of another expert in a different specialty. See Citibank v. McGladrey & Pullen, LLP, 953 N.E.2d 38 (Ill. App. Ct. 1st Dist. 2011). Using information your expert has provided, ask if the pediatrician's opinion would change under certain circumstances; possibly the pediatrician will undo his or her own opinion this way. Another major point of questioning should bring out the ways in which the injuries could have been caused by accidental trauma. And, of course, you must cross-examine the pediatrician for bias with questions detailing the pediatrician's close relationships with DCFS, police, and the state's attorney's office.

Child protection work is tough, frustrating, and not for most, but diligence can mean the difference between a child being reunited with family and a family ripped apart.

Rachelle Hatcher is from Gary, Indiana, and has been a practicing criminal and civil defense attorney in Chicago since 2010. Richard E. Gutierrez worked previously as a staff law clerk for the Federal Court of Appeals for the Seventh Circuit and has defended parents in abuse and neglect cases for the last year.
JIOP Alumni Spotlight: Joseph M. Hanna

By Tracey Foglia – August 30, 2017

Joseph M. Hanna is a partner at the 300-lawyer firm Goldberg Segalla, where he serves as chair of the firm’s Diversity Task Force, Sports and Entertainment Practice Group, and Retail and Hospitality Practice Group. An active leader and mentor at the ABA, Joe is cochair of the Young Lawyer Leadership Program and former chair of the Minority Trial Lawyer Committee. He is the founder and president of Bunkers in Baghdad, a nonprofit that collects and sends golf equipment to U.S. soldiers and veterans worldwide to provide recreation and aid in injury rehabilitation.

Joe is known nationally as a leading voice for diversity in law and business, as well as for community service, with recognition for his efforts in these areas coming from the ABA, the Minority Corporate Counsel Association, the New York Bar Association, and other organizations.

Q&A with Joseph M. Hanna

Can you please provide background on why, and how, you became an intern with JIOP?
I learned about the ABA JIOP program from a poster in the Career Services office at the University at Buffalo, where I went to law school. The clerkship was in Houston—I’d always wanted to clerk outside of New York State, and my sister Ramona and my brother-in-law Fred lived in Houston with my nieces and nephews, so it felt like a natural fit for me.

During the application process, I interviewed with Larry Vilardo, then a Buffalo attorney and now a federal judge in the Western District of New York. I don’t think Judge Vilardo knows just how profoundly it impacted me, but that interview was a career-altering event for me. I still remember he told me his parents "didn’t have two nickels to rub together," but he worked hard and made his way to Harvard Law School. He then had a successful private practice, helped found a firm, and was an editor for the major ABA magazine.

His life story resonated with me. We were alumni from the same high school. I was one of four kids and, like him, my parents didn’t have two nickels to rub together. It was so inspiring to me to hear, straight from him, how far he had come and what the ABA meant to him. I was already a student member of the ABA, but that conversation really kicked off my involvement in the ABA and, ultimately, my career.
Then it was on to Texas. I had another eye-opening interview, with Deb Grumm, who was law clerk to Judge Elizabeth Ray in the 165th Judicial District Court in Houston. I was fortunate to be accepted for the JIOP internship with Judge Ray, and that summer was one of the best of my life.

**What was your most memorable experience while interning with JIOP?**

Honestly, it was the first day of the internship—the first time I walked in that courthouse. It was a beautiful, older building, right in downtown Houston. There I was, my first time working in a big city. I walked in, showed my ID and badge, went up to the chambers, and it hit me: I was an employee of the court.

I can still recall that feeling, from just looking around and meeting Judge Ray for the first time, to sitting in the jury box, taking notes as the lawyers came in in their suits to argue motions. I felt like I was a lawyer—and I knew in my heart that felt really good.

**How did your JIOP experience shape your professional career?**

Again, a lot of it comes back to having the opportunity to sit down with Larry, to hear his story and learn how far he'd come with the ABA. That really set the tone for my JIOP experience, my ABA involvement, and my career. Without the first two, I don't know what my career would look like, but every day I'm thankful that I invested the time and took advantage of those opportunities early on.

I got the chance to clerk with a judge who deeply cared about the program and wanted to provide the best possible experience for her clerks. Through the JIOP program, I gained experience with motions from both the plaintiff's bar and the defense bar, and I got a better idea of what the profession is like, what lawyers do day in and day out.

That inspired me further to seek leadership opportunities in the program and in the ABA. As a JIOP alum, I volunteered with the program to interview students, connected with a lot of great people through its alumni program, and kept in touch with Program Director Gail Howard, even at the end of law school and into my first year as an associate.

The result of all that: It strengthened my leadership skills, created opportunities for me to get into leadership positions, and taught me to speak confidently in front of people. Most importantly, it helped me learn how to network and gave me plenty of opportunities to do so.

**What advice would you give to students who will be interning in judicial chambers?**

Never shy away from asking questions of the judge, the judge's clerk, or your fellow interns. The judge and clerk will welcome your questions, and it's the only way to learn what you need.
to get out of the experience because everything moves quickly and there are so many moving parts. If you don't ask, next thing you know the summer could be over. Take the opportunity when it's there.

Again, the networking aspect of the JIOP program, or any internship really, is a crucial element. I cannot stress that enough. If the judge asks you out to lunch, go. If there's an opportunity to spend time with your fellow interns, for example, to go out after a day of work, take that opportunity to engage with them. These are going to be the judges and partners at various law firms in the future. Take the opportunity to start building that network now: You'll be miles ahead once you've passed the bar, and your choice to engage as an intern will continue to pay off throughout your career.

**What advice would you give to JIOP alumni who are interested in pursuing philanthropic work while balancing a legal career?**

If there's something you're passionate about, you should go for it. It's not easy, but it's worth it to be a positive example and to make a difference somewhere in your community or for a cause that is personal to you.

Obviously, all of our jobs have different expectations associated with them. If you're a plaintiff's attorney, it's going out and getting clients, and making sure you're serving their needs. If you're in-house, it's to represent the company you're working for. If you're in private practice at a big firm, it's helping your clients succeed while meeting your billable hours. On top of that, you may be starting a family or have other commitments.

You have to make sure you're doing your best to balance your work and your life, and you have to set aside time to pursue outside things that interest you. Tom Segalla, a named partner at my firm who has a long and distinguished career, sets aside time on Saturday mornings to tackle things like this. He calls it "Tom's time." That's imperative for young associates or people in any walk of life, if they want to contribute outside of work.

If you set time aside for yourself—say, those two to three hours on a weekend morning before everyone's awake, or if you go into the office early before anyone else is there—those few hours can equal whole days of productivity. The key is to dedicate the time and stick with your plan.

**Tracey Foglia** is an associate attorney at the Florida Professional Law Group, PLLC, in Hollywood, Florida, specializing in first-party property claims. She is a coeditor of the JIOP newsletter.
From the Bench: Diversity in the Law

By the Hon. Joseph A. Greenaway Jr. – Spring 2017

The following is the welcome address given by Judge Greenaway Jr. to first-year law students at Cardozo Law School on August 24, 2016.

Thank you for that kind introduction. I always listen to my bio with both wonderment and embarrassment. First, the wonderment: what professional good fortune I have had with so many exciting opportunities and great experiences. And second, I always wish that the introduction was shorter. I am quite certain you would rather hear what I have to say than hear my biography.

I am so happy to be here speaking to the class of 2019 as you embark on the journey of a lifetime. Whether you realize it or not, you will be learning a new language and rules, rules, and more rules. And then having learned the rules you will learn that there are myriad exceptions to all the rules you have just mastered. Intellectually, it will be overwhelming at times—for me, it was the entire first year—but hopefully it will, at least some of the time, be fun.

To each of you, I extend a hearty welcome and congratulations; there are so many who would love to be sitting in your seat. When Dean Leslie asked me to speak to your class, I was flattered. It is both a serious obligation and an honor to stand before you. Admittedly, I stand before you with some trepidation. The open-endedness of the assignment—“Judge, anything you want to say about diversity and inclusion”—is daunting.

The history buff in me was immediately excited. Let me tell you about the speech I was going to give. Diversity is thought by millennials and generation Xers to be a concept of fairly recent vintage. In fact, particularly in our profession, we have embraced notions of diversity from the beginning of the Republic. Issues of both diversity of thought and religion were integral to the discussions at the Constitutional Convention. Federalists and Anti-Federalists were the main factions in the summer of 1787. Of course, religious diversity was then, and remains today, a cornerstone of our political landscape.

At the turn of the 20th century, a different focus came to the fore in our profession. The influx of immigrants from Europe meant that slowly but surely the face and complexion of the legal profession was changing. With the advent of Wall Street firms, a more focused and pronounced practice of exclusion meant that stratification within the ranks of lawyers created both barriers and opportunities. Barriers in unwritten practices to exclude either lawyer or client based not only on who you were, but also on where you came from. On the other hand, opportunities to
service new, less well-heeled segments of the business world took hold and law firms were formed with new and distinct surnames.

In the middle of the 20th century, widespread social protest gave voice to groups in our society that only had been seen but not yet heard. Young people, women, blacks, and other people of color demanded that our profession and our nation live up to the moral and legal imperative first pronounced in the Declaration of Independence—that we hold these truths to be self-evident that all men are created equal. That starting point would eventually lead me to focus on the strides that have been made by women in the profession, capped recently with the achievement of perhaps the most famous female attorney in the history of our country—presidential candidate Hillary Clinton.

Now, if you are a history or political science buff, that might be a great talk. But if you want to be a good judge, you have to be willing to be persuaded. So I ran my idea by my significant other, who happens to be an academic and a research scientist, and her reaction was polite but firm and it was negative. No historical perspective. No looking back at the halcyon days of yore. She was persuasive: “This talk doesn’t say anything about you. The first-year class is about to embark on a journey, an adventure. They want to be both informed and inspired. Share with them something about your experience.”

**My Experience**

So I went back to the drawing board, asked myself what about my experience I could offer to say something both cogent and meaningful about diversity and inclusion.

I love old movies. Long time ago, before VCRs, DVDs, and DVR, you had to read the TV Guide and set your alarm clock to see old movies. One of my favorites and one that I actually first saw as a teenager at 2:00 in the morning is *It’s a Wonderful Life*. It is indeed a magical story in which the main character, George Bailey, disgusted with his otherwise boring and mundane life in a small town following World War II, contemplates suicide. An angel intervenes and shows him the profound effect he has had on his family and so many people in his community. He literally learns what the world would be like had he never been born.

I will not be so dramatic. My objective is not to examine what the world would look like without Joe Greenaway. What our profession would look like without diversity is clear and uninteresting. But I do want to share with you some of my experiences that make the case for keeping issues of diversity and inclusion at the forefront in decision making. The concept and its implications of diversity are most keenly both felt and influenced by decision makers. If you are a worker, you may have chances to implement change but only a fraction of the opportunities that a decision maker does.
It makes sense to first say what I mean by “diversity.” What is diversity and what work does it do? My definition of diversity is fairly simple: It is broadening the spectrum of the possible. Whether we are talking about women, people of color, religious or ethnic minorities, or the economically challenged, diversity requires us to challenge the way we look at our assumptions and stereotypes.

In 1916, if you were sitting in the first-year law school class orientation, your classmates were white men for a myriad of reasons. Among those reasons was one critical one: Within the profession and more generally in the society, we simply did not envision people other than white men occupying positions of authority and respect.

That is not true today. I dare say if I asked you all to turn to your right and then turn to your left, and then asked if you see a woman or a person of color, you would each say yes. But what I mean by diversity in action is more than that. I have the honor of serving on the Board of Trustees of Columbia University. One of my fellow board members, Ben Horowitz, a Silicon Valley titan, recently talked to me about filling a position in his company. The person recruiting for the opening understood the job responsibilities but was only bringing in white males to interview. Ben asked him what might sound like a simple question—what are the characteristics and skills of the person we want to fill the position?

The manager easily listed all of the qualities necessary for the position. Ben asked him, “Are those qualities unique to white males?” The manager did not follow immediately. He responded, “So, you want me to hire a black guy?” Ben’s response was, “No, I want you to think about the people who possess this skill set and then hire the best person.” Who ultimately got the job is not important. What is important is that the selection process changed because Ben challenged the manager to think about the process differently, which increased the spectrum of possible candidates. The person who got the job was going to be from among the large group of qualified candidates. For me, diversity is really about changing perspectives. You are all familiar with Justice Ginsburg. In the late 1950s, she graduated from Columbia Law School near the top of her class, she was an editor on the law review, and she landed a district court clerkship only because the dean pleaded with an old friend to hire her. Less than 20 years later, women were routinely selected as clerks at every level of the judiciary. All that changed was the perspective of the federal judges doing the hiring.

The only way this diversity process is affected is when the decision maker affects it. And decision makers come from all strata of society. One thing is certain: Lawyers are decision makers. Each of you will affect the process one day. How you do so is up to you.
As for me, I just want to tell you about a few of my experiences and let you come to your own conclusions regarding what role thinking about diversity played in my decision making.

As an in-house counsel at the health care conglomerate, Johnson & Johnson, I learned a lot about diversity in the corporate environment. In the business world, everyone tries to distinguish himself or herself from others to earn business; the question in that context when hiring lawyers is whether a lawyer is so unique that no one else can do the job. If the answer to that question is no, who should be hired? I was proud to be part of an environment where the primary consideration in selecting outside counsel was identifying the skill set necessary for the case. For one example, I had a case in San Angelo, Texas, for which my boss told me to hire whomever I had confidence in. I looked at what expertise we needed, and the lawyer we hired was an African American practicing at a large Texas firm. Johnson & Johnson received first-rate representation, but we lost the case. My boss did not focus on the fact that the lawyer was black but instead on what we could learn from the loss. Going forward the loss created no impediment to hiring outside counsel from a diverse perspective whatsoever; the lesson I learned was that we must deliver the desired result.

I have been a federal judge for 20 years. People often ask me whether being a judge was always an aspiration I had. It was not. Part of the reason for my answer is that you cannot see what you cannot imagine. When I attended Harvard Law School, all of the walls in in every major building were decorated with magnificent paintings of jurists and other leading figures in the bar. None of these portraits looked like me. It was not exactly that this experience intimidated me but simply that it influenced my ideas about what was possible.

Fifteen years later, when I received a phone call from Senator Lautenberg’s search committee asking whether I had an interest in becoming a federal judge, I was flabbergasted. It simply was not something that I had envisioned as possible. It was not that I believed I was not qualified for the job, but up to that point there was only one judge of color to serve on the federal judiciary in New Jersey. I have no idea if diversity was a factor in my selection or what specific role it played with the senators and the president. But if it did factor into the decision making, what is wrong with that?

I stand humbly before you to say dream away. Let your imagination be the only impediment to your ambition. This is what broadens the spectrum of the possible.

**Affecting the Legal Environment**  
I do ask myself periodically how have I affected the legal environment I have occupied?
I am the sole decision maker in hiring my law clerks and interns. I know from experience that a broad array of candidates can do excellent work, so I need not solely consider the default law clerk candidate—a white male from a top law school who is on law review. My intent is not to exclude the default candidate, but to point out that by broadening the spectrum of possibilities, I have expanded my opportunity. In 20 years, I have hired 60 law clerks; I have hired over 40 women and over 30 minorities. I do not make those numbers plain to ask for any particular recognition, but instead to show you that I have been able to build an excellent reputation while keeping diversity at the top of my list of priorities in selection.

The same is true regarding my interactions with my colleagues and the public during my tenure on the bench. I was a federal district judge for 13½ years. In that time, I sentenced over one thousand defendants, both individuals and corporations. I am confident that my background and experience influenced my sentencing of defendants. And I am equally confident that truth does not mean that justice was not done or that any defendant eluded justice.

As it relates to my colleagues, I believe we all benefit from all kinds of diversity as it relates to our decision making. Several years ago, I sat on a three-judge panel with two of my colleagues who happen to be white men. The case involved the review of a denial of a suppression motion. The defendants alleged that there had been incomplete information related from a store detective at Bloomingdale’s to local police such that the only way for the police to have reasonable suspicion to search the subject’s car was to assume that the black defendants were conspiring despite any tangible evidence to support that proposition. Despite the lack of concrete information, the police stopped the car and searched it. They found incriminating evidence. My colleagues acknowledged the obvious problems with the admission of the evidence. In fact, they admitted it was a very close call. In conference, they specifically asked me whether in my opinion the police had acted in the way they did because the defendants were black. My answer was yes. I am proud of my colleagues for their candor. I do not believe that the same conversation would have occurred without a person of color on the panel. My presence gave my colleagues a different and more personal perspective in trying to resolve a difficult case.

Admittedly, the kind of exchange I have just described is not a regular occurrence. That does not mean, however, that in my colleagues’ decision making, asking for another colleague’s perspective is not considered when appropriate.

My last example of the influence of diversity on decision making involves two American heroes and giants on the bench—Thurgood Marshall and Sandra Day O’Connor. On the passing of Justice Marshall, many of his colleagues and friends wrote stirring tributes to him. Justice O’Connor’s tribute, entitled “The Influence of a Raconteur,” appeared in the Stanford Law
Review. In that piece, Justice O’Connor described how Justice Marshall’s presence on the Supreme Court touched his fellow justices. She wrote:

Although all of us come to the Court with our own personal histories and experiences, Justice Marshall brought a special perspective. His was the eye of a lawyer who saw the deepest wounds in the social fabric and used law to help heal them. His was the ear of a counselor who understood the vulnerabilities of the accused and established safeguards for their protection. His was the mouth of a man who knew the anguish of the silenced and gave them a voice.

At oral arguments and conference meetings, in opinions and dissents, Justice Marshall imparted not only his legal acumen but also his life experiences, constantly pushing and prodding us to respond not only to the persuasiveness of legal argument but also to the power of moral truth.

Although I was continually inspired by his historic achievements, I have perhaps been most personally affected by Justice Marshall as raconteur. It was rare during our conference deliberations that he would not share an anecdote, a joke or a story; yet, in my ten years on the bench with him, I cannot recall ever hearing the same “TM” story twice. In my early months as the junior Justice, I looked forward to these tales as welcome diversions from the heavy, often troublesome, task of deciding the complex legal issues before us. But over time, as I heard more clearly what Justice Marshall was saying, I realized that behind most of the anecdotes was a relevant legal point.

Justice O’Connor closed her tribute with the following:

As I continue on the bench, a few seats down from where he once sat, I think often of Justice Marshall. . . . Occasionally, at Conference meetings, I still catch myself looking expectantly for his raised brow and his twinkling eye, hoping to hear, just once more, another story that would, by and by, perhaps change the way I see the world.

I share Justice O’Connor’s words to make crystal clear to you the practical way in which diversity influences decision making. Justice O’Connor had the most weighty of jobs—the swing vote on the Supreme Court of the United States. An historic figure in her own right, she plainly benefited, years later, from the courage of President Johnson, who saw the opportunities, despite great opposition, in making the Supreme Court more accurately reflect our social fabric with Justice Marshall’s appointment.
I share these thoughts with you today not to defend or promote diversity. The benefits of diversity are manifest and need not, in my view, be justified. I wanted instead to show you diversity at work. Does diversity make our profession measurably better? Are we beholden to do everything we can to make our profession reflect the diverse world in which we live? These are among the questions you will invariably have to answer. Our country is changing. By 2050, we will be a nation whose citizenry will reflect a majority of persons of color. As a profession, we can either continue to embrace diversity or turn a blind eye to it. How you, as future leaders, address diversity will determine not only your future but also the future of our profession.

*The Hon. Joseph A. Greenaway Jr. is an associate editor of Litigation and sits on the Third Circuit Court of Appeals in Newark, New Jersey. This article was originally published in Litigation Journal, Vol. 43, No. 3, Spring 2017.*
5 Do's and Don’ts for New Trial Lawyers from the Desk of a District Court Law Clerk

By Josephine Bahn – March 2, 2017

You are on your way to becoming the next great trial lawyer, but unsure of the best way to get there. You are not alone. Having had the opportunity to clerk for a federal court judge, I compiled a list of “do’s and don’ts” that may be of some assistance in this journey.

During my year-long clerkship, I saw the “good, the bad, and the ugly” in advocacy skills. However, regardless of skill level, I learned something from every attorney that appeared in chambers or in the courtroom. This, in fact, brings me to my first tip: always keep your eyes open, as learning opportunities abound each time you appear in court. Here are some additional tips to point you in the right direction!

**Do’s:**

1. **Always read the judge’s published guidelines**, which are generally posted on the court’s website and provide essential information. For example, some judges still want hand delivered courtesy copies, notwithstanding e-file requirements. Other judges have stylistic preferences, such as larger fonts or only double-sided copies. Not complying with these individual rules can lead to an unhappy judge—which is never a good thing!

2. **Always check your citations—and then check them again.** There is nothing that drives a law clerk—or a judge—crazier than an incorrect citation. It is difficult to take an argument, and the lawyer giving the argument, seriously when the clerk is unable to find your case.

3. **Read a few of the judge’s most recent opinions on the type of motion you are filing.** Got a motion to dismiss? Check out the latest three decisions from the judge. This will give you both a procedural and substantive advantage in that, for example, you will know the judge’s preferred citation format as well what arguments he/she finds most persuasive. Of course, this is no guarantee that you will prevail, but it will certainly increase your chances of success.
4. **Be organized.** Be on time to Court and make sure you meet all the filing deadlines. If you are late to a proceeding or miss a filing deadline, you hurt your client and your own credibility as a practitioner.

5. **Be prepared.** Make sure you know the case inside and out. There should never come a time in a proceeding where you do not know the answer to a question you are asked. Make sure you’ve got it all together before you walk into court.

6. **Be nice to your adversary**—as the old saying goes, “you catch more flies with honey than with vinegar.” A judge will be more understanding if you reach out to the other side on a discovery dispute before you file that motion to compel. Also, joint requests for extensions of time should be a common courtesy that you give other attorneys.

**Don’ts**

1. **Don’t show up late.** I am repeating this to highlight its importance. The judge can (and in all likelihood will) be late. You cannot be. It sets a bad precedent if you can’t make a court proceeding on time. Even better—be 10 minutes early. On time is late and early is on time.

2. **Don’t ask the law clerk for legal advice or an opinion.** A question for a law clerk should never start, “Should I...” In all likelihood not only will the law clerk be unable to give you an answer, he or she could be annoyed that you have even asked the question. Do your homework before you make the call. Law clerks do not want to hear from you until you have exhausted all other possible avenues.

3. **Don’t post on social media about the case or the judge.** This may seem pretty self-evident, but it is worth mentioning. Judges go to great lengths to remain neutral and to stay out of the limelight. This includes keeping their photographs and decisions off social media. So even though you may have lost a tough argument in court that day, do not go home and post a new status about it—you are only hurting your own professional reputation.

4. **As tempting as it may be, don’t interrupt the judge, opposing counsel, or witnesses.** This too may seem self-evident, but it's something that I consistently see. Constant interruption not only delays the proceeding but agitates the judge and prevents him or her from doing the job—whether it be fact-finding, deciding a motion or making any type of judicial determination. Lawyers are passionate about their clients and the legal issues of the case by nature, but you need to learn to curb that passion when someone
else, whether the judge, your adversary or a witness, is speaking. Mutual respect can take you a long way in a court of law.

5. **Ultimately, don’t be discouraged if you lose a motion or an argument.** Lawyers can be great advocates for their clients, but, as a result, sometimes lose the forest through the trees. You and your adversary both believe that you will win every motion and every case, but, obviously, there is always a “losing party” in litigation. Sometimes that will be you. I have yet to meet a lawyer who had a perfect trial record. Just because you lost once does not mean you should bury your head in the sand, either. Rather, learn from your mistakes and come back twice as strong so that you can win that next motion or case!

While this list is certainly not exhaustive, it does serve as a great starting point for how to hone your skills as the next great trial attorney. Remember that each day in court will give you new perspective in the profession and help you grow as an attorney. Keep your eyes open and your head up!

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