JYL News

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JYL President's Corner — May 2018

Alicia Hall
President,
Jackson Young Lawyers

I asked my four year old what she thinks lawyers do every day. She said, "You go to work to do different things for different people." I'm glad she didn't say "you sit in front of a computer all day." She made me think, though. Our jobs as lawyers require us to balance and execute on a lot of different things, while working with a lot of different people. As young lawyers, that in itself can be a tough skill to master. Beyond understanding our substantive areas of practice, we have to be purposeful in our different approaches with clients, our partners/bosses, and the support staff that literally save us on a daily basis. Then we appear before judges or other elected officials and feel pressure to deliver flawless legal work. Do we have anything left at the end of the day to meet with peer lawyers to fellowship and give back to our profession and community? It seems we do, because this year's JYL has had one of the most engaged groups of young lawyers that I've ever seen. Our membership meetings have been packed, and it's incredibly encouraging to see new faces at our meetings. You all have done so much good through our community service and pro bono efforts. And I hope you've benefited from JYL's networking opportunities. Thank you for being an active part of this organization, especially with all the other demands on your time and talents. I truly believe in the value of this local young lawyers group, and I will always be grateful for the relationships that have come from it. It's such an honor to have led this group. My most sincere thanks go to the fantastic board members and committee chairs who made this year happen. Congratulations to our Outstanding Service Award winner, Maggie Kate Bobo, and our Pro Bono Service award winners, Vernon McFarland and McCall Stern. I look forward to seeing Andrew Harris and the new board continue our good work next year.

- **Alicia Hall**, *President, Jackson Young Lawyers*

IN THIS ISSUE:

My Experience as Judicial Law Clerk

Clerking is a great experience." I—and most likely you—heard this many times throughout law school. While the words are simple enough and the sentiment readily accepted as true, the understanding it resonated in me was that comparable to the equation "E = mc2." Many of us know this equation, can recite it, accept it as true, but possess little understanding as to the depth of its meaning and significance. Today, I do not possess any greater understanding of Einstein's famous equation than when I ostensibly learned it in grade school. But now, as a judicial law clerk, the "great experience" that is clerking is no longer a phrase without knowledge.

Every law clerk's experience will of course vary, often depending on the system—state or federal, the level—trial or appellate, and most notably, the judge for whom he or she clerks. I have the wonderful privilege of clerking for Chief Judge L. Joseph Lee of the Court of Appeals of Mississippi. Though I am a licensed lawyer, as a judicial law clerk, I do not "practice" law. It is an interesting thing to spend three years in law school learning and training to advocate for clients and make legal arguments on their behalves, only to -- on the first day of your legal career -- take an oath to do no such thing. So what is it exactly that judicial law clerks do?

"Research and writing." I'm highly aware that to tell you law clerks spend a great portion of their time conducting legal research and writing is not particularly informative. In fact, when asked to write about my experience clerking, I thought, "What is there to share? Everyone knows law clerks do legal research and writing for judges." But let me provide you with a bigger peek behind the curtain as to how this seemingly simple work is of great value for a young lawyer.

I remember my first year of law school being called on by a professor to answer whether I agreed with the majority or dissent on a US Supreme Court case and to explain why. I felt (and was) wholly inadequate in my ability to answer the question with any conviction or justification. Sure, I had read the case and briefed it for class, but the issues were complicated and the Justices' opinions well-versed in arguments and equally persuasive in passion. I was out of my depth. I experienced a similar feeling when I first started clerking. Being asked as a newly-minted attorney who has never actually practiced law to examine and analyze the arguments of two (or more) opposing lawyers (who have actually practiced law) as well as the decision of the trial judge felt like an abuse of discretion at best and plain error at worst. Nevertheless, that is the task of a judicial law clerk.

As you would expect, I read the parties' briefs, the trial court's orders, memorandums, and opinions, complaints and answers, motions, trial and hearing transcripts, etc., and then spent even more time doing legal research on the applicable law. Then, I drafted a memorandum or a draft opinion on the case—its facts, procedural history, standard of review, and finally, an analysis or discussion of the relevant law and how it applies. Sounds simple enough. For me, within this process is one of the most unique and valued of my experiences clerking: being forced, as a young and inexperienced lawyer, to think and make legal conclusions independent of achieving a certain outcome and not for the benefit of a certain side. This is, of course, within a safety net as all of my thoughts or conclusions on a case are mere recommendations and the decisions are that of the Court. But for the

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benefit of my post-law-school legal education and within a system that aims to give deference only to the law, I am not told at the outset of working on a case what the disposition or result *ought* to be. This forces me to really examine the issues and learn all I can regarding what the law has to say on the matter, including its various caveats and qualifiers, and how it applies to the case at hand—all without a preconceived notion of what is the "right outcome." To be sure, I am not a perfect legal researcher, writer, or legal thinker and so at times have missed the mark and been directed back to the drawing board. But it is this unique work and method of learning that perhaps only judicial clerkships provide—the opportunity to think, decide, and be course-corrected when needed.

In addition to research and writing, another surprising but fruitful part of my clerkship experience has been arguing. Yes, arguing. You may have heard some version of this statement: "make your argument, but don't argue with the judge." This is wise advice and should be heeded. And yet within the confines of the judge's chambers, at his or her election, you may find the judge wants to argue—and with you, the law clerk. While it is not done often, the arguments are hearty but all in good nature for the benefit of *the law clerk*—that is, being able to explain and support the statements or conclusions of the research and writing you've done. At times, during the course of a spirited -- even loud -- discussion, I did not know whether the argument was genuine or a test. In either case, I always knew it was beneficial for me, even if it meant redrafting the memorandum or opinion. I also believe that it benefits the parties in the case as well as the substance and clarity of the opinion, as the issues are earnestly considered and fleshed out. While writing is a slower, more thoughtful process, arguing requires quick thought and speech—testing under pressure what you know about the case, its facts, and the law. This kind of arguing has been enjoyable and provided a valuable education to my legal thought process.

My experience clerking has also taught me that more words and pages are not necessarily better. So, with the benefit of that knowledge, I will conclude. While I've only informed you of what you already know, that my clerking experience has largely included research and writing, I hope those words are now more illuminated for you. For me, now nearing the end of two years clerking, I can say with both understanding and sincere conviction, "clerking is, *indeed*,a great experience."

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Danielle Burks is a judicial law clerk for Chief Judge Lee of the Mississippi Court of Appeals. She attended Mississippi College School of Law where she graduated summa cum laude in 2016. Before becoming an attorney, Danielle worked as a Registered Nurse in clinical neurology at Hattiesburg Clinic and served as a clinical trial coordinator for Pfizer pharmaceutical studies. Danielle now resides in Madison with her husband, Adam, though she is a proud Jackson native.

Want to contribute to JYL News?

Our Newsletter Chairs are looking for interesting articles, insightful musings and hilarious commentary that Jackson's Young Lawyers will enjoy! For a chance to be published in JYL News submit articles to Anna Little Morris at anna.morris@butlersnow.com and Morgan Miranda at morgan.miranda@butlersnow.com.

Practice Pointer

When in Doubt, Assert a Rule 403 Objection, Lest a Corporate Defendant's Financial Wellbeing Come into Evidence Through a Backdoor

Generally, a corporate defendant's financial well-being is not admissible evidence at trial for concern that such evidence would encourage a jury to find the corporate defendant liable merely because the corporate defendant could well-afford the plaintiff's demand, regardless of fault. This rule is rooted in common law and is almost universally recognized.

Recently, however, the Georgia Supreme Court in *Chrysler Group LLC n/k/a FCA US LLC v. Walden, et al., 812 S.E.2d 244* (Ga. March 15, 2018) appeared to carve out a loophole to this general rule by affirming a trial court's decision to allow the salary and additional compensation of a corporate defendant's CEO, totaling $68 million, to be admitted into evidence at trial. It is not a stretch to appreciate how the compensation of a corporate defendant's CEO is a strong indication of the financial well-being of a corporate defendant.

This victory was not lost on plaintiff's counsel, who used the opportunity during closing to argue that "what [defendant's counsel] said [decedent's] life was worth, [defendant's CEO] made 43 times as much in one year . . . We ask you return a verdict for the full value of [decedent's] life of at least $120 million . . . That's less than two years of what [defendant's CEO] made just last year."

These remarks apparently resonated with the jury who returned an award in plaintiff's favor for $120 million in wrongful death damages and $30 million in pain and suffering damages, finding the corporate defendant 99% at fault.

The topic of the CEO's overall compensation arose during the questioning at trial of the corporation's COO. Although the corporate defendant's counsel made repeated objections, such objections were limited to relevance and wealth-of-a-party.

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In analyzing whether the trial court erred in admitting the compensation evidence, the Georgia Supreme Court held that Georgia Evidence Rule 622, which concerns a witness's bias, "establishes that a witness's bias is always a legitimate issue to be proved, but not that any evidence offered to show bias is always admissible no matter how prejudicial or irrelevant to the issue being tried." The Court further held that a CEO's compensation did not violate the common law rule that a party's wealth is not admissible because the CEO was not a party.

The Court thus treated the CEO as an ordinary witness who was subject to the introduction of bias evidence. But a company's CEO is not an ordinary witness, and, rather, a direct reflection of the company, which can only speak through its corporate representatives. If compensation evidence is admitted, then the jury has a strong indication of the wealth of the defendant corporation. Instead of relying on the facts of the case before it, the jury will likely be tempted to award a plaintiff a higher verdict, especially when the plaintiff is particularly sympathetic as was the case in *Chrysler Group LLC n/k/a FCA US LLC v. Walden, et al.*

Ultimately, the Georgia Supreme Court held that because the corporate defendant had not made a *specific* Rule 403 objection or mentioned unfair prejudice in its objections, the analysis of whether compensation evidence was properly admitted should be evaluated under a plain error standard of review – a low standard of review often limited to criminal cases. The Court found that the actions of the corporate defendant's CEO were directly relevant to the claims at hand and his credibility (or lack thereof) was central to the question before the jury.

Throughout the opinion, the Georgia Supreme Court cautioned that compensation evidence was not necessarily always admissible but instead was subject to Rule 403 analysis, suggesting that the court would have come to an opposite conclusion should the admissibility have been analyzed under the Rule 403 and abuse of discretion standard. Despite these cautions, the opinion certainly opens the door to compensation evidence being admitted into evidence. And no doubt plaintiff attorneys in Georgia will use this opinion to their advantage until clearer, stronger case law disrupts the current precedent set by *Walden.*

The lesson learned from *Walden*? When in doubt, raise a Rule 403 objection.

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Margaret Smith is a member of the Product Liability, Toxic Tort and Environmental Litigation Group at Butler Snow LLP. She focuses her practice on automotive products liability cases, pharmaceutical device litigation, and general litigation matters. Margaret is a member of the Defense Research Institute's Young Lawyers Section, the American Bar Association, Jackson Young Lawyers, the Madison County and Capital Area Bar Associations, and the Mississippi Defense Lawyers Association. She lives in Jackson with her husband Peyton and two children, Peyton and Elizabeth.

Legal Beagle 5K Raises over $8K for MVLP

On March 10, JYL joined with local firm and community sponsors to raise $8,328 for the Mississippi Volunteer Lawyers Project through our annual Legal Beagle 5K race. Special thanks to Lane Bobo for his hard work in organizing this successful event!

Snapshots from the JYL/CABA Spring Social

March JYL Meeting Welcomes Local Judges

At the March membership meeting, Jackson Young Lawyers heard from two well-respected local judges, the Honorable John S. Grant, Chancery Court Judge of the 20th Chancery Court Division, and the Honorable John Emfinger, Circuit Court Judge of the 20th Circuit Court Division. The session provided a candid discussion of frequently violated rules, practice recommendations, and advice on professionalism in the legal field. A few tips that were offered:

1. Put all important arguments in your brief; don't save anything for oral hearing.

2. Call the court administrator, as well as other lawyers, and ask questions about local court procedures.

3. Civil lawyers don't focus enough on jury instructions. Know what you have to prove!

4. What relief are you seeking? Make it abundantly clear in your brief and in your oral arguments.

5. Don't participate in what appears to be a downturn in civility among lawyers. It's a disservice to your clients. Very few long roads have no curves; incivility will come back to haunt you.

6. Your number one priority as a lawyer is to help people.

Special thanks to immediate Past President John Dollarhide for moderating the panel discussion with these judges.

City Court Mediation Successes

JYL attorneys Lott Warren of Baker Donelson, pictured left, and Randall R. Saxton II of Saxton Law PLLC, pictured right, recently conducted three successful mediations volunteering through the City Court Mediation Program.

Helping Young Lawyers Bridge Generational Gaps in Law Practice

JYL was thrilled to co-sponsor a CLE with CABA and the MS Bar YLD on March 16. Nakimuli Davis-Primer presented a two-hour session on "Closing the #Divide: How Young Lawyers Can Transcend Generational Differences as They Transform the Practice of Law." Lawyers of different generations learned about ways we can better communicate with one another and picked up practical professional tips.

Donate Items to Magnolia Speech School

JYL is proud to support the Magnolia Speech School through an Amazon wish list! Magnolia Speech School enables children with communication disorders, like deafness and language impairments, to develop their full potential through spoken language and literacy. The School is a special purpose, non-profit institution and is a proven leader in providing progressive, personalized education to students who need assistance with communicative skills. Everything purchased from the list goes directly to students and teachers at Magnolia Speech School – an easy way to help support a great cause!

Visit smile.amazon.com and search for "Magnolia Speech School" under "pick your own charitable organization" to contribute. Thank you foryour support!

magnolia speech school