JANUARY 2015

CBA RECORD

JANUARY IS NATIONAL MENTORING MONTH

Isolation, Quarantine and Your Client

The Rebuttable Presumption

Data Mining and the Fourth Amendment

PAYMENT PROCESSING, EXCLUSIVELY FOR ATTORNEYS.

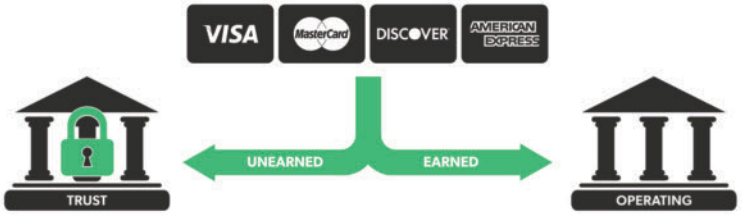
THE CHICAGO BAR ASSOCIATION

Proud Member Benefit Provider

1.95% per transaction | No swipe required | No equipment needed

Helping law firms get paid.

It is critical for attorneys to handle credit card transactions correctly. IOLTA guidelines and the ABA Rules of Professional Conduct require attorneys to ethically accept credit cards. LawPay guarantees complete separation of earned and unearned fees, giving you the confidence and peace of mind that your transactions are always handled the right way.



www.LawPay.com/cba | 866.376.0950

LAWPAY
CREDIT CARD PROCESSING

AffiniPay is a registered ISO/MSP of BMO Harris Bank, N.A., Chicago, IL

Have a case to refer?

Look no further than McNabola Law Group.

Competitive fees for referring attorneys

One of the top trial records in Illinois

Success rate of almost 98% of cases at trial

Record high verdicts and settlements in Cook, DuPage and Will Counties

Over $550 million in verdicts and settlements on behalf of our clients

MCNABOLA
LAW GROUP

55 West Wacker Drive, Ninth Floor Chicago, Illinois 60601 312.629.2900 www.McnabolaLaw.com

PERSONAL INJURY • TRUCKING NEGLIGENCE • MEDICAL MALPRACTICE • PRODUCT LIABILITY • AVIATION LAW

CLIFFORD LAW OFFICES

CONTINUING LEGAL EDUCATION PROGRAM

Clifford Law Offices, an accredited CLE provider in Illinois, is sponsoring the FREE webinar:

"THE ETHICS OF CONFLICTS OF INTEREST"

Presented by:

- Robert A. Clifford, Founder and Senior Partner, Clifford Law Offices
  Moderator of program

Panelists:

- Hon. Virginia M. Kendall, U.S. District Court, Northern District of Illinois, and former Member of the Judicial Conference of the U.S. Codes of Conduct Committee
- Bruce A. Green, Louis Stein Chair at Fordham University School of Law and Director of its Stein Center for Law and Ethics

Clifford Law Offices is sponsoring a free two-hour continuing legal education program on the ethics of conflicts of interest in the eighth annual Clifford Law Offices Continuing Legal Education Series. Conflicts of interest can bedevil both litigators and transactional lawyers. The relevant rules seem complicated and highly technical, and the decisions interpreting them sometimes give inconsistent guidance. But get it wrong and you can face discipline, disqualification or a civil lawsuit. This two-hour program will give practical advice about how to handle conflicts of interest: When are you barred from representing multiple clients or appearing adversely to a current or former client? When is the representation permitted with the clients' informed consent, and how should consent be obtained? How do courts handle alleged conflicts when they are raised in disqualification motions? Which conflicts are the most frequent subject of disciplinary decisions and lawsuits – and how can they be avoided?

Date: Thursday, Feb. 19, 2015

Time: 2:30-4:30 pm CST

Place: Broadcast live via the internet from the DePaul Center, Room 8005
One East Jackson Boulevard, Chicago, IL

Registration is required to attend the free program.

In-person space is limited so please reserve your spot – first come, first served.
To register, visit www.CliffordLaw.com and click on the yellow bar entitled Clifford Law CLE Programs.

For questions, please call Clifford Law Offices at 312-899-9090 or email programs@CliffordLaw.com.

This program has been approved for two (2.0) hours of professional responsibility credit by the Illinois Commission on Professionalism.

CLIFFORD LAW OFFICES

PERSONAL INJURY PRODUCT LIABILITY TRANSPORTATION AVIATION PREMISES LIABILITY LAW
CONSUMER AND HEALTH CARE FRAUD WRONGFUL DEATH MEDICAL MALPRACTICE
COMMERCIAL FRAUD LITIGATION WHISTLEBLOWER LITIGATION CONSUMER CLASS ACTIONS

120 NORTH LASALLE STREET 31ST FLOOR CHICAGO, ILLINOIS 60602
TELEPHONE (312) 899-9090 FAX (312) 251-1160 WWW.CLIFFORDLAW.COM

CBA RECORD

6 **President's Page**
National Mentoring Month

10 **CBA News**

18 **Chicago Bar Foundation Report**

20 **Murphy's Law**

40 **Legal Ethics**
By John Levin

42 **Ethics Extra**
By Nicole M. Petrarca

44 **LPMT Bits & Bytes**
By Catherine Sanders Reach

46 **A Person of Interest**
Getting to Know…
Jack Rives
By Geoff Burkhart

48 **Summary Judgments**
Bonnie McGrath reviews Lowell B. Komie's *Balcon* and Walter Roth's *Toni and Markus, From Village Life to Urban Streets*

The **CBA Record** *(ISSN 0892-1822) is published seven times annually (January, February/March, April/May, July/August, September, October, November) for $10 per year by the Chicago Bar Association, 321 S. Plymouth Ct., Chicago, Illinois 60604-3997, 312/554-2000, www.chicagobar.org. Subscriptions for non-members are $25 per year. Periodicals postage paid at Chicago, Illinois. POSTMASTER: Send address changes to* **CBA Record**, *c/o the Chicago Bar Association, 321 South Plymouth Court, Chicago, Illinois 60604.*

CONTENTS

January 2015 • Volume 29, Number 1

INSIDE THIS ISSUE

26 **Loss of Society in Death Cases–The Paradox of the Rebuttable Presumption**
By Michael P. Cogan

YOUNG LAWYERS SECTION

30 **Happy New Year**
By Paul J. Ochmanek, Jr., YLS Chair

32 **The Double-Edge Sword of Victim Survival–Imperfect Self Defense**
By Chrisopher Kopacz and Elena Penick

36 **When the Government Mines "Big Data," Does It Conduct a Fourth Amendment Search?**
By Mike Gentithes

On the Cover

This month's cover contains a photograph from **CBA Record** Editorial Board Member Ruth Kaufman. Find out more at www.ruthkaufman.com.

PRESIDENT'S PAGE

BY DANIEL A. COTTER

National Mentoring Month

"Tell me and I forget, teach me and I may remember, involve me and I learn."
–Ben Franklin

"Here's the reason that I sing this to you, life has lies and life has truth, seek it hard now and seek it true, might be the last thing you ever do.."
–6'10, "Timothy" (song from an older man to his young mentee, Timothy)

"The delicate balance of mentoring someone is not creating them in your own image, but giving them the opportunity to create themselves."
–Steven Spielberg

January is National Mentoring Month, a campaign to focus on and promote youth mentoring. Mentoring is an important issue to me. I just completed a four year term as Chair of Lawyers Lend-A-Hand to Youth, an organization whose mission is to promote best practice mentoring and tutoring programs in disadvantaged communities.

People ask why I mentor and am passionate about mentoring. The reason is simple - nothing I have accomplished has been possible without the incredible mentors whose lives and paths have crossed with mine. Starting with my dad, who taught me much, every step of the way, I have had warm, caring people help me on the journey, return me to the path, push me and guide me. I am simply trying to pay that love and kindness forward.

The Boy Scouts have a wonderful tradition for young men at their Eagle Courts of Honor. The scout gives mentor pins to those who have been especially guiding in their journeys to Eagle. If I were to give out pins to everyone who helped shape me, I would need an eighteen wheel trailer.

Call to Mentoring

The CBA and its affiliated entities have a number of programs to permit you to pay it forward and mentor, whether it is a youth, a law student or a young lawyer. Lawyers Lend-A-Hand can match you up with a mentoring program to volunteer as a board member or mentor. There are many other opportunities for you as well.

Lawyer to Lawyer Program. The CBA is looking for attorneys licensed six years or more to participate in its Mentoring Program. Mentors are matched with newly licensed attorneys (admitted 2 years or less) for a year-long mentoring program. Participating mentors receive 6.0 hours of CLE credit upon program completion. This program is a great way to mentor newer attorneys. For more information and to get the application, go to www.chicagobar.org/mentoring. There will be a kickoff mandatory orientation program on January 29, at noon. This is a fantastic program with guides for discussion topics.

Shadow Program. This is a new YLS program that will launch in early 2015. This program affords law students and newly

WE ARE NOT JUST NURSING HOME LAWYERS

We may be the go-to nursing home lawyers in Illinois, but we have repeatedly won multi-million dollar verdicts and settlements in a variety of serious injury, accident and medical malpractice matters.

Most recently we recovered a $7.5 million settlement for an injured boat worker that was THE LARGEST JONES ACT RECOVERY EVER RECORDED IN ILLINOIS. Our firm held the previous Illinois record Jones Act settlement of $4.5 million set in 2008.

OTHER NOTABLE RESULTS:

- A $17.7 Million Medical Malpractice/Brain Injury Settlement
- A $6.5 Million Birth Injury Settlement
- A $6.5 Million Record Kane County Wrongful Death/Trucking Accident Settlement
- A $2.4 Million Pedestrian Accident Verdict

We've shared millions in attorney's fees with our referring lawyers on many of these cases.
CALL STEVE OR JOHN AT 312-332-2872 TO DISCUSS REFERRALS.

LEVIN & PERCONTI

ATTORNEYS AT LAW

325 North LaSalle Street, Suite 450 • Chicago, Illinois 60654 • Phone: 312-332-2872 • Toll-free: 877-374-1417 • Fax: 312-332-3112
www.LevinPerconti.com • www.nursinghomelaw.com
Questions@LevinPerconti.com

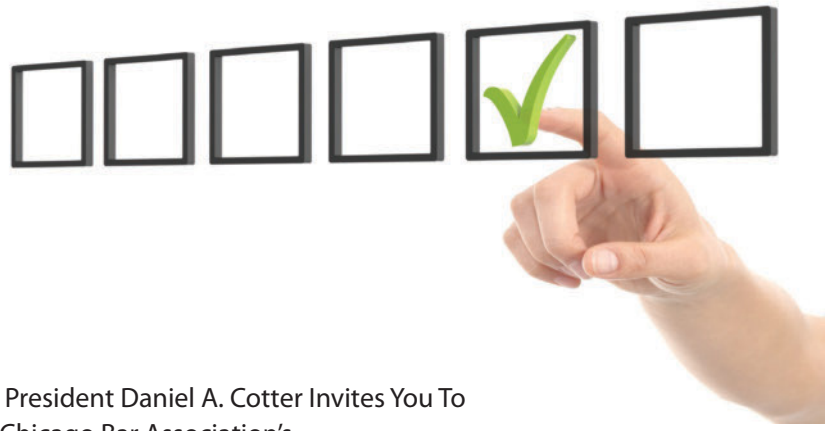
PLYMOUTH PERSPECTIVES

CBA President **Daniel A. Cotter** blogs at http://plymouthperspectives.chicagobar.org/ throughout the bar year. Follow Dan's blog to hear his perspective and keep abreast of what's happening at the CBA.

admitted lawyers the opportunity to shadow attorneys to learn what different practices do and find potential fits. YLS Chair, Paul Ochmanek, shadowed with me years ago while a law student and it was helpful for him to determine insurance was not in his future. This program will allow those shadowing similar opportunities.

Open Mentoring. We will be having an open forum focus session in February to talk with young lawyers. We want to find out what they would like to see in this program and discuss the basic framework we have in mind. This will then kick in during the first quarter.

The above are a few examples of the opportunities available to you to mentor. During this month of mentoring, reflect on those who have been influential in your successes and have taken time to mentor. Then, get busy paying it forward and provide that same support to the next generation. You will not only be helping the mentee, but you will feel great about the experience and giving back. ■



CBA President Daniel A. Cotter Invites You To
The Chicago Bar Association's

50th Anniversary Celebration of the Civil Rights & Voting Rights Acts

Thursday, April 30, 2015 | Hilton Chicago

*For pricing and reservations, contact **Tamra Drees** at 312-554-2057 or tdrees@chicagobar.org.*

New Attorney Program

Firm / Attorney Program

Mediation Only Program

ISBA MUTUAL

Illinois Lawyer Professional Liability Insurance

Surety Bonds

Risk Management Resources

Liability Minute Practice Updates

Product Offerings for Illinois Lawyers

(800) 473 - 4722

www.isbamutual.com

Isolation, Quarantine and Your Client

By Geoff Burkhart
Editorial Board Member

The Ebola outbreak in western Africa and the threat–both real and perceived–of an outbreak in the United States have made quarantine and isolation a hot topic. The issue gained even greater attention when Kaci Hickox, an American nurse, publicly fought her involuntary quarantine after she returned from treating Ebola patients in Sierra Leone. Given the attention paid to Ebola, it has become increasingly important to separate fact from fiction when discussing quarantine and isolation.

On November 20, 2014, the Chicago Bar Association and the Young Lawyers Section hosted *Isolation, Quarantine & Your Client*. The panel focused on Illinois' regulations and the power of local health authorities to order quarantine or isolation. Panelists included the Honorable James A. Zafiratos, Assistant Cook County State's Attorney Julia Dimoff, and City of Chicago Chief Prosecutor Lynda Peters, as well as Kendall Stagg and Jessica Pipersburgh, attorneys for the Chicago Department of Public Health and Cook County Department of Public Health, respectively.

The panel first clarified terminology in this area: *isolation* refers to physical separation and confinement of an infected person, while *quarantine* concerns separation of a person who *may* have been exposed, but is still asymptomatic. Ebola, for instance, has an incubation period that may last up to 21 days. Thus, a person may have to be quarantined for that length of time to determine whether the person has been infected. Isolation normally occurs in a hospital, while quarantine often occurs at the person's home.

Panelists also described the regulatory landscape, noting that these issues were the province of state, county, and city health departments. Officials from any of these entities' health departments may order vaccination, monitoring, isolation, or quarantine. Orders may be executed immediately.

Where isolation or quarantine is involuntary, the health department must file a petition to enforce its order within 48 hours. Petitions must identify the subject of the order; the premises to which they are bound; the reasons for the order, including description of the disease; the duration; and the order's medical basis. The subject of the order is entitled to notice of a hearing within 24 hours.

The subjects of these hearings have the statutory right to an attorney, as well the right to appointed counsel in the case of indigence. The proceedings are confidential. The burden of proof at a hearing on a petition to enforce where public welfare is in danger is clear and convincing evidence.

The panel also discussed monitoring in Chicago. O'Hare, the busiest airport in the world, is a common entry point for international travelers. The Center for Disease Control (CDC) maintains O'Hare offices and closely monitors travelers, screening 181 suspect passengers since October. Additionally, four Chicagoland hospitals–Lurie, Rush, Northwestern, and the University of Chicago–are designated Ebola treatment centers.

Panelists emphasized that Ebola is not easily transmitted. Unlike flus or colds, Ebola is not airborne. An uninfected person must contact the bodily fluids of an infected person. Additionally, transmission can only occur when a person shows symptoms of the disease. In other words, an asymptomatic person in the incubation phase cannot transmit Ebola.

Finally, panelists shared sample isolation and quarantine orders, as well as authority for quarantine and isolation proceedings. It is reassuring that so many levels of government are involved in protecting our population, even if a disease like Ebola is not easily transmitted. ■

YOUR REFERRAL NETWORK

If your office receives an inquiry about a legal issue you simply do not handle or your client has a special need beyond your practice area, don't fret! Simply refer the caller or client to the CBA's Lawyer Referral Service (LRS).

To learn more about the LRS, contact Brenda Ott, Director of the Lawyer Referral Service, at 312/554-2071 or bott@chicagobar.org, or visit www.chicagobar.org and click on Services, Lawyer Referral Service.

HOW TO BE PREPARED FOR TRAFFIC COURT

Before you head to Cook County Traffic Court, watch this short video on how to be prepared and present yourself in a professional, organized manner. Circuit Court of Cook County Associate Judge Thomas R. Mulroy shares tips on how to be prepared for Traffic Court. Presented by the Chicago Bar Association and the Illinois Judges Association. Watch the video now at www.chicagobar.org.

CBA membership is now more valuable than ever!
At $150 a plan year, the CLEAdvantage allows you to save time and money in meeting your MCLE requirements.

Unlimited CLE for Only $150!

CLEADVANTAGE

ANYTIME, ANYWHERE

100's OF SEMINARS + WEBCASTS
www.chicagobar.org

Save on Minimum Continuing Legal Education Costs with The Chicago Bar Association's Unlimited* CLE Plan – the CLE*Advantage*.

It's a simple and cost effective solution for CBA members. ***For $150 a plan year***, you will receive:

In-person attendance at an unlimited number of CLE and YLS seminars

Access to CLE Webcasts at www.chicagobar.org
**Both live and archived seminars receive Illinois MCLE*

Free CLE DVD rentals from the CBA Legal Bookstore

Members also receive:

Free Monthly Seminars with MCLE Credit!

- Free Illinois MCLE credit for attending in-person or live Webcasts of CBA and Young Lawyers Section committee meetings that qualify for credit. *No extra fees to join committees or attend noon-hour meetings!*
- Individual member access to a personal MCLE credit history report at www.chicagobar.org that enables members to track both CBA and non-CBA sponsored CLE.

To join the CBA or the CLEAdvantage Plan visit *www.chicagobar.org*

Non-members call: *312-554-2133* • Members call: *312-554-2056*

**See complete CLEAdvantage program terms and conditions at www.chicagobar.org. Some restrictions may apply. Plan available to CBA members only. The CBA is an approved provider of MCLE in Illinois. For information on Illinois MCLE requirements, visit www.mcleboard.org.*

The Legacy of Operation Greylord

By Rosemary Simota Thompson
Editorial Board Member

The Chicago Bar Association and the Illinois Judges Association recently joined forces to honor Judge Brockton Lockwood, the unsung hero of the Greylord Investigation, which targeted systemic corruption in Chicago's judicial system over two decades ago. Justice Michael Hyman, newly installed President of the IJA, presented Lockwood with their Distinguished Service Award for his courage and integrity.

A panel of Operation Greylord's former strike force, moderated by Judge Mary Mikva of the Chancery Division, shared their reflections on the high stakes of their investigation and its legacy. The blue ribbon panel consisted of former U.S. Attorney for the Northern District of Illinois, Tom Sullivan, now a partner with Jenner and Block; Dan Webb, who succeeded Tom Sullivan as U.S. Attorney and is now a partner at Winston and Strawn; Daniel E. Reidy, lead Greylord prosecutor and now a partner with Jones Day; and Bill Megary, a lawyer, who served in the FBI for 22 years and retired as the Special Agent in Charge of the FBI's New Jersey office.

All panelists recalled the harsh reality of putting their licenses on the line to spearhead the Greylord investigation. At that time, the Illinois Supreme Court had chastised a prosecutor for deception and using false evidence to obtain a conviction on a much smaller matter, although the Court stopped just short of imposing discipline. *In re: Freidman,* 392 N.E.2d 33 (1979). Had Greylord gone belly up, the panel could have lost their meal tickets and forfeited their licenses. Notwithstanding the high stakes involved, they assumed the risk and pressed on.

Born and raised downstate, Lockwood first encountered corruption "Chicago Style" when he was rotated to traffic court–a yearly routine for all downstate judges. A crack trial lawyer and a relatively new judge at the time, Lockwood was deeply troubled by what he saw–multi-level corruption throughout the system, involving judges, law clerks, and the police. When his conscience could stand no more, Lockwood approached the Feds. By wearing a recording wire and posing as a judge willing to go "on the take," Lockwood was instrumental in gathering evidence that would ultimately purge traffic court of its taint, although it meant giving up his judge's robe.

Working undercover for the Feds, Lockwood put his life on the line to gather evidence to expose and to prosecute corruption. Some of the convicted court personnel routinely carried guns, while others had questionable underworld affiliations. As Justice Hyman noted in his remarks:

> Who among us would risk our career…to expose corruption by colleagues? Before you tell yourself that you would risk everything for a principle, think again. Wouldn't you fear the consequences…for you…for your family?…Wouldn't you be more apt to just bite your lip, keep undeniably clean and stay clear of the mess? At that time, at that place, for a judge to voluntarily come forward…could only happen if that judge possessed an unrelenting moral conscience, a reverence for truth, an inner courage, an unshakeable sense of duty, a spirit of patriotism, and a very stiff spine… Brockton Lockwood was that judge.

By exposing rampant corruption, the legacy of Operation Greylord involved radical change. Cook County now has a reputation as one of the best judicial systems in the country, where judges operate with integrity, fairness, dignity, fidelity to the law, and honesty. In addition to the clean sweep by Operation Greylord, Justice Hyman also credited the work of Chief Judge Timothy Evans for this improvement. ■

SAVE BIG MONEY

with Alliant's low auto rates

Proud Partner of The CBA

NEW as low as **1.99%** **APR**[1]

USED as low as **2.24%** **APR**[1]

Your CBA membership provides access to some great benefits including great rates on savings and loans for cars, homes, education and more from Alliant Credit Union.

APPLY TODAY...

- **Visit www.alliantcreditunion.org**
- **Call 800-328-1935**

ALLIANT credit union

(1) APR=Annual Percentage Rate. Alliant rates as of 12/15/2014. Alliant loan approval, APR and downpayment required and other terms and conditions based on LTV (Loan to Value), payment method, creditworthiness, collateral (including age of vehicle), and the term of the loan. Advertised rates include automatic payment option. Rates are 0.4% higher without automatic payment option. Refinancing of loans from other lenders is available. Member is responsible for any fees associated with transferring of title. Rates are 1% higher when refinancing an existing Alliant loan. Financing available in all 50 states. All loans are subject to approval. Rates, terms and conditions are subject to change. You must be 18 or older to apply. We may not extend credit to you if you do not meet Alliant criteria. Allowable terms vary by loan amount. You must be or become a member of Alliant. Applicant must meet eligibility requirements for Alliant membership.

EQUAL HOUSING OPPORTUNITY

Federally insured by NCUA

8 O'CLOCK CALL WITH JUDGES LARSEN, ALLEN, AND VALDERRAMA

Thoughts on Running a Courtroom

By Shannon Burke
Editorial Board Member

*On October 17, 2014, the Chicago Bar Association hosted an **8 O'clock Call** with three judges from the Circuit Court of Cook County, Chancery Division: Judge Diane Larsen, Judge Thomas Allen and Judge Franklin Valderrama. Judge Thomas Hogan from the Circuit Court of Cook County, Law Division, moderated the panel. The distinguished panelists answered questions from the audience, including the following:*

What are the courts doing to increase access to justice for low-income people?

Judge Larsen is very appreciative of legal aid organizations that offer services to low-income people. The court has developed an order form that orders parties to seek representation from those organizations, formalizes the process, and sets a timeline that the litigants must follow. Additionally, the court has started a help desk at the Daley Center where litigants can seek assistance.

What are your thoughts about settlement conferences?

Judges Larsen and Allen believe settlement conferences can be beneficial and are willing to conduct them. Judge Allen noted that settlement conferences typically result either in settlement or narrowing the gap between the parties' positions. Judge Valderrama does not volunteer to interject himself in the proceeding, but he has a standard order form in which parties can jointly ask him to engage in a settlement conference. He believes that settlement conferences are generally most beneficial after some discovery has begun because the parties are then aware of potential defenses and other issues. He asks that the parties exchange settlement positions in advance of the conference.

How do you like to run your trials?

All of the judges conduct pretrial conferences to address as many issues as possible prior to the start of trial. On the day of trial, they generally allow parties to give brief opening statements and then dive straight into presenting the evidence. Judge Allen noted that many attorneys decline the opportunity to give closing arguments and instead prefer to prepare proposed findings of fact and conclusions of law. Judge Hogan questioned why litigants would forgo the opportunity to present their argument to the court.

What are your thoughts on trials that are not conducted on consecutive days?

All of the judges agreed that it is not ideal to start and stop trials and that they would prefer to have consecutive trial dates. Judge Larsen recommended that litigants be as accurate as possible when providing to the court an estimate of the number of days the trial will take.

Do you find oral argument helpful?

Each judge has changed his or her mind on a case after hearing oral argument, which Judge Hogan said lent credence to his belief that attorneys should not forgo the opportunity to present their arguments to the court. All of the judges emphasized that they personally read each brief, so it is not necessary to repeat what has already been stated in the briefs. Judge Larsen believes the best use of oral argument is offering the respondent the opportunity to respond to the movant's reply brief. Judge Allen welcomes oral argument and finds that some attorneys are better able to communicate orally than in writing. He can recall times when dispositive issues were raised for the first time at oral argument. Judge Valderrama often sets oral arguments and uses the time to ask questions about the case, flush out issues, and discuss applicable case law. He actively questions the attorneys, especially when they present a novel issue.

What do you find most helpful to know when presiding over a case arising from the Illinois Administrative Procedure Act?

Judge Valderrama noted that the parties have already completed the evidentiary hearing by the time they reach the appeal. Therefore, he finds it most effective when litigants frame their arguments in terms of the standard of review and how it applies to their case. ■

Past Recipients

Hon. Harold Washington (1990)
Mayor, City of Chicago

Hon. Charles E. Freeman (1991)
Chief Justice, Illinois Supreme Court

Hon. Thurgood Marshall (1992)
Justice, U.S. Supreme Court

Hon. George N. Leighton (1993)
Judge, U.S. District Court, Northern District of Illinois

Hon. Earl E. Strayhorn (1994)
Presiding Judge, First Municipal District,
Circuit Court of Cook County

Jewel Lafontant-Mankarious (1995)
Partner, Holleb & Coff

James D. Montgomery (1996)
James D. Montgomery & Associates, Ltd.

Hon. Ann C. Williams (1997)
Judge, U.S. Court of Appeals, Seventh Circuit

Hon. William Cousins, Jr. (1998)
Justice, Illinois Appellate Court

Earl L. Neal (2000)
Earl L. Neal & Associates

Hon. Damon J. Keith (2001)
Judge, U.S. Court of Appeals, Sixth Circuit

Hon. Timothy C. Evans (2002)
Chief Judge, Circuit Court of Cook County

Hon. John H. Stroger, Jr. (2003)
President, Cook County Board of Commissioners

Hon. Blanche M. Manning (2004)
U.S. District Court, Northern District of Illinois

Hon. Glenn T. Johnson (2005)
Ret. Illinois Appellate Court Justice

Hon. R. Eugene Pincham (2006)
Ret. Illinois Appellate Court Justice

Donald Hubert (2007)
The Hubert Law Group

Rita A. Fry (2008)
Retired Cook County Public Defender

Eileen M. Letts (2008)
Greene and Letts

Chester L. Blair (2009)
Blair & Cole

Larry R. Rogers, Sr. (2010)
Power, Rogers & Smith, P.C.

Hon. Cynthia Y. Cobbs (2011)
Administrative Office of the Illinois Courts

Hon. Patricia Brown Holmes, ret. (2013)
Schiff Hardin LLP

Hon. Joy V. Cunningham (2014)
Illinois Appellate Court, First District

The Chicago Bar Association's 2015 Earl Burrus Dickerson Award Luncheon

celebrating the distinguished career of

Hon. Shelvin Louise Marie Hall

Illinois Appellate Court, First District

Tuesday, February 24, 2015
The Standard Club • 320 S. Plymouth Court, Chicago
Reception 11:30 a.m. • Luncheon 12:00 p.m.

Tickets are $65 per person or $650 per table of 10.
For reservations, contact Tamra Drees at (312) 554-2057 or tdrees@chicagobar.org.

This special award was established in honor of the late Earl B. Dickerson who was an outstanding lawyer and among the first African-American members of The Chicago Bar Association. His life and professional career were devoted to the law and helping others gain equality and justice. In this spirit, The Chicago Bar Association established the Dickerson Award to recognize and honor minority lawyers and judges whose careers at the bar emulate the courage and dedication of Dickerson in making the law the key to justice for all in our society.

CLE & MEMBER NEWS

November 2013 New Admittees-Don't Let Your Membership Lapse!

If you have not yet renewed your CBA membership, please take a moment to do so now. Payments must be received by the end of February in order to maintain benefits and savings, including complimentary seminars, free committee meetings with free MCLE credit, job search/career development programs, networking events, solo/small firm start up resources, tech training and more. You can renew by mail, phone (312-554-2020), fax (312-554-2054) or online (www.chicagobar.org). Checks and the following credit cards are accepted: Visa, MasterCard, American Express and Discover.

CBA programs and services can help you and your firm remain competitive in tough times. As your local bar association, the CBA offers you many ways to establish business and support networks, learn from experts and keep up with trends affecting the legal profession- without incurring travel costs, extra section fees and steep registration prices.

CBA membership is a solid investment in your future, with access to a variety of legal resources and the brightest legal minds in Chicago. And we're located right in your backyard. Check out our web site at www.chicagobar.org to see what's new at the CBA.

We are proud to serve and represent you, appreciate your past support and look forward to your continued involvement in the important work of the Association. Questions regarding dues renewals should be referred to Bertha Cowart at 312-554-2020 or bcowart@chicagobar.org

Note: If you are in between jobs and/or having financial difficulty due to the economy, you may apply for the CBA's reduced dues rate of $25 for our current membership period which runs through May 2015. The reduced dues form must be completed and returned with your regular dues statement. The form can be found on our website under the Membership Tab, Dues Hardship Form. Questions – contact Karen Stanton at 312-554-2131 or kstanton@chicagobar.org. Reduced dues are not available for CLE Advantage Members. Also, if you do not plan to renew this term, please call 312-554-2135 and let us know to avoid reinstatement fees in the future. ■

Web Highlight: Save Money on CBA Member Discount Programs

Save on Lexis, virtual and temporary office space, Alliant Credit Union, client credit card processing, car rentals, UPS, magazine subscriptions and more. Visit www.chicagobar.org, Membership, Member Discounts for more information and links to our discount providers. These programs have been negotiated to offer you savings and special offers as a value-added benefit of your CBA membership. Make the most of your membership investment and check out these savings! ■

Add Value to Your Membership

Did you know the CBA recently launched the following new services, benefits and savings for you?

- Practice area email updates from Lexology. www.chicagobar.org/newsstand.
- Leadership & Client Development Institute–low cost seminar series to help propel your legal career forward. www.chicagobar.org/leadership.
- Free monthly CLE seminars–attend live or access archived webcasts, enough to fulfill your MCLE requirements. www.chicagobar.org/freecle.
- New job search/career assistance resources–free one on one speed counseling, interactive round table seminars, FAQs, search tips and other online articles. www/chicagobar.org/CAP.
- Start Your Own Law Firm Boot camp. www.chicagobar.org/for-CBA-members-only/lpmt.
- Solo small firm resource portal. www.chicagobar.org/lpmt.
- Alliance for Women Mentoring. 312/554-2132.
- Hands-on Technology Training Center–for members and support staff, covers business and legal software sessions. www.chicagobar.org/techtraining.
- Free breakfast and lunch judicial roundtables-offering tips and advice directly from the judges themselves. www.chicagobar.org/cle.
- Low cost practice management consulting. www.chicagobar.org/lpmt.
- Free, automatic personalized MCLE credit tracker. www.chicagobar.org/mcle.
- Volunteer/probono activities–many offer free legal training and hands on experience to enhance your resume. 312/554-8356.
- Special programming for recent law school grads - free interactive job search seminars, career counseling, new admittee to do list, court walk throughs, live breakfast series on practice fundamentals, online practice area pointers. 312/554-2131.

THE CHICAGO BAR ASSOCIATION

Continuing Legal Education

Business Law: What's Happening in Today's Deal Marketplace
February 4 • 2:00-5:15 p.m.

Police Conduct and the Search for Equal Justice
February 5 • 12:00-2:45 p.m.

Representing and Accommodating Persons with Disabilities
February 6 • 12:00-1:15 p.m. ***Free for Members!***

Innovative Pricing Techniques
February 17 • 3:00-4:30 p.m.

Expert Systems, Process and Knowledge Management
February 18 • 12:00-1:30 p.m.

Professional Responsibility in Adoption Law Practice
February 18 • 3:00-6:00 p.m.

Practice Differently, Improve Your Client Development
February 19 • 12:00-1:30 p.m.

The Shifting Landscape of Marketing and Advertising Law
February 19 • 2:00-5:00 p.m. • Foley & Lardner

New Ways to Attract and Serve Clients
February 20 • 11:30 a.m. - 12:30 p.m.

The Future of Environmental Law
February 24 • 3:00-6:00 p.m.

Courtroom Cross: Statutory Summary Suspension
February 24 • 3:00-8:00 p.m. • Daley Center

CyberSecurity: What Attorneys, Businesses Need to Know
February 25 • 11:30 a.m. - 1:45 p.m.

Labor & Employment Law Update 2014
February 25 • 3:00-6:00 p.m.

Top 10: What Divorce Lawyers Need to Know
February 26 • 3:00-6:00 p.m.

To register, call 312-554-2056 or visit www.chicagobar.org.
Programs are held at the CBA Building, 321 S. Plymouth Ct., Chicago, unless otherwise indicated above.

Seminars are also Webcast live (as well as archived) at www.chicagobar.org and West LegalEdcenter. Visit www.chicagobar.org for more information. The CBA is an accredited continuing legal education provider in Illinois.

The Chicago Bar Association

MEMBERSHIP EXCLUSIVES

Savings and more!

www.chicagobar.org/save

Alliant Credit Union - Below Market Loans, Free Checking
800•328•1935 x8616 • www.alliantpromos.org/cba

Avis Car Rentals (AWD #A851600)
800•698•5685 • www.avis.com/chicagobar

Budget Car Rentals (BCD #T720200)
800•455•2848 • www.budget.com/chicagobar

Business Online Payroll - Full Service Online Payroll
http://demand.businessonlinepayroll.com/chba

Carr Workplaces - Full, Part-Time & Virtual Office Space
312•577•7600 • www.carrworkplaces.com/chicagobar

Club Quarters Hotels (Password=Chicago Bar)
203•905•2100 • www.clubquarters.com

CVS/Caremark Rx Savings Plus
877•673•3688 • http://chicagobar.rxsavingsplus.com

EsqSites - Law Firm Websites & Hosting (Offer Code: CBA)
877 SITES 123 • www.esqsites123.com

LawPay Merchant Account/Credit Card Processing
866•376•0950 • www.lawpay.com/cba

LexisNexis (Offer Code M-ChicagoBar-JCM134335)
866•836•8116 • www.lexisnexis.com/bars

Magazine Subscriptions - Lowest Prices Guaranteed
800•603•5602 • www.buymags.com/chbar

Membership Visa Credit Card
888•295•5540 • www.chicagobar.org

OfficeMax - Online and in-store savings
Complete form at www.chicagobar.org/save

RPost Registered Email Service - Free trial
866•468•3315 • www.rpost.com/chicagobar

United Parcel Service - Save up to 26%
800•325•7000 • www.savewithups.com/cba

Video Conferencing & Meeting Services at the CBA
312•554•2124 • www.chicagobar.org (under Services)

www.chicagobar.org/save

Chicago Bar Foundation Report

The Chicago Bar Foundation — Ensuring access to justice for all

A Year of Impact That You Made Possible

By Angelika Labno
CBF Administrative and Communications Coordinator

Thanks to your generous support of the CBF, 2014 saw impressive progress in the fight to make the justice system more fair and accessible for everyone in our community. You can be proud of the impact you are making through your Foundation. Below are just a few highlights, and you can learn more about this important work and how you can get more involved by visiting chicagobarfoundation.org. Thank you again for coming together with your colleagues from throughout the legal community to make a difference.

JEP participants collaborate in the program's office space at 208 S. Jefferson. Working in a shared location encourages peer mentoring, collaboration and collective innovation.

JEP Takes Flight

The CBF's Justice Entrepreneurs Project is an incubator program for recent law school graduates to start innovative law practices providing affordable legal services to low- and moderate-income people. Thanks to your support, JEP already has become a national model and received significant local and national media attention over the course of 2014. The year ended with the first 10 JEP lawyers completing the program and continuing their practices as the first alumni members of the JEP network. Twenty-Eight more dedicated and entrepreneurial lawyers are now in the program, building innovative law practices to provide much-needed legal help to a large segment of our community who too often do not have meaningful access to affordable help in the traditional legal market.

To learn more about the JEP or to connect with a JEP lawyer, visit jepchicago.org.

New Resource Center in Daley Center

A major undertaking last year was working with the Circuit Court and other partners to open the Circuit Court of Cook County's Resource Center for People Without Lawyers in the Daley Center. The center fully opened in April 2014 and is a major milestone in the longer-term effort to make the court system more user-friendly and accessible for people without lawyers, a key goal of both the CBF and the Circuit Court.

JusticeCorps volunteers greet people looking for help at the the Circuit Court of Cook County's Resource Center for People Without Lawyers in the Daley Center.

Attendees at the CBF's 2014 Passport to Chicago event in May listen as one of the competing Kendall College chefs explains his dish. The 2nd Annual Passport to Chicago will take place on May 1 this year.

Mark your calendars for the 2015 CBF event schedule:

January 30	CBA Young Lawyer Section Texas Hold 'Em Tournament (to benefit the CBF)
May 1	2nd Annual Passport to Chicago
July 14	17th Annual Pro Bono and Public Service Awards Luncheon
September 25	8th Annual Casino Legale
October 25-31	11th Annual Pro Bono Week
November 7	19th Annual Fall Benefit

DAILY PRACTICE AREA UPDATES

The CBA is pleased to introduce the second year of CBA Newsstand by Lexology, a daily email aimed at providing CBA members with valuable and free practical know-how.

Learn more and further tailor your newsfeed at www.chicagobar.org/newsstand.

Last year, JusticeCorps student volunteers helped more than 25,000 people–providing general information, procedural advice, and referrals–and thousands received legal advice and assistance at one of the three advice desks that anchor the center.

Investing in Justice Campaign Sets New Records Across the Board

Under the exemplary leadership of last year's Campaign Chair, Patrick Fitzgerald, 146 law firms, corporate legal departments and other law-related organizations participated in the 2014 Campaign, and more than 4,300 individual attorneys and legal professionals contributed over $1.3 million, all record amounts.

One hundred percent of the individual contributions to the Campaign again went directly to CBF grants to 34 pro bono and legal aid organizations. The campaign funds helped to leverage substantially more funding from government and other sources, making it possible for the CBF to again award more than $4 million in grants in 2014. You can learn more about some of the great programs your campaign support makes possible at chicagobarfoundation.org/grants.

Great Fun for a Great Cause: The CBF's 2014 Events

More than 3,000 people came together at the CBF's special events in 2014 to support the CBF's mission, celebrate pro bono and public service achievements, and recognize leaders in the cause of making the justice system more fair and accessible for everyone.

You can find photos and more information on CBF events at chicagobarfoundation.org/events. ■

MURPHY'S **LAW**

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR

Congratulations to the cast, crew, and all involved in the hijinks of this year's Bar Show, "Bar Wars Episode 6.5: The Phantom Museum." The CBA's irreverent musical comedy review struck back for four nights and one afternoon at DePaul's Merle Reskin Theatre in their December Run. Looking forward to next year! Photo by Bill Richert.

Pursuant to the Association's Bylaws, the 2015 Nominating Committee is in formation. Under the Bylaws, the second immediate past president serves as Chair of the Committee. Five Committee Chairs are drawn randomly from all of the Association's 92 standing committees; the Young Lawyers Section selects three members; the Past Presidents select two members from the Past Presidents Committee and two at-large members; and the Board of Managers selects four members at-large who cannot be members of the board. Members may not serve on the Nominating Committee two successive years or more than twice in five years. The Nominating Committee consists of seventeen members and will be chaired this year by **Aurora Abella-Austriaco**. The Nominating Committee interviews interested members and recommends a slate for the following positions: Second Vice-President, Secretary, Treasurer, and for eight vacancies for a two-year term on the Board of Managers. Members may nominate themselves or another member for an officer or vacancy on the Board of Managers. The Nominating Committee will meet toward the end of March to conduct member interviews and recommend the slate of new officers and board members, which will be posted on the Association's website and published for member review. Under the Bylaws, the recommended slate of officers and board members is approved by the members at the Annual Meeting.

For more information, or to obtain an application to serve as an officer or for one of the board vacancies, contact Events Coordinator **Tamra Drees** at 312/554-2057 or tdrees@chicagobar.org.

CLE in Barcelona-with Optional Visits to Madrid, Seville & Granada

More than 30 members have already signed up for this outstanding Continuing Legal Education program which will be held April 7-10 in conjunction with the Barcelona Bar Association. The CBA and the Barcelona Bar Association signed a "Friendship Agreement" in 2013 and President **Daniel A. Cotter** began planning this program before he assumed office last June. The CLE programming will be held at the Barcelona Bar Association and will feature a "Mock Trial: Comparison of Civil and Common Law Systems," "Client and Ethical Issues" and "Making a Difference: Enhancing Professionalism and our Communities." Speakers include: **Aurora Abella-Austriaco**; Judge **William J. Bauer**, U.S. Court of Appeals, Seventh Circuit; Judge **Ruben Castillo**, Chief Judge, U.S. District Court, Northern District of Illinois; Justice **Mathias Delort**, Illinois Appellate Court; **Anita Alvarez**, Cook County State's Attorney; **J. Timothy Eaton**, Taft Stettinius & Hollister; **Daniel M. Kotin,** Tomasik Kotin Kasserman; **E. Lynn Grayson**, Jenner & Block; **Terri L. Mascherin**, Jenner & Block, Judge **Thomas R. Mulroy**, Circuit Court of Cook County, Law Division; **Daniel A. Cotter**, Fidelity Life; **Timothy S. Tomasik,** Tomasik Kotin Kasserman; and from Barcelona–**Cesar Rivera**, Cuatrecasas Goncalves Pereira; **Dolores Sancha**, Bartolome & Briones and **Pedro Yufera**, Yufera Abogados.

A welcome reception will be held at the Barcelona Bar Association on Tuesday, April 7, and a closing dinner will be held on Thursday, April 9. The optional Madrid extension, April 4-6, will include a tour of Spain's Supreme Court, followed by a walking tour of Old Madrid and the historic Palace. A dinner for the group is also included in the Madrid program fee.

The optional tour of Seville/Granada extension, April 10-13, will include a walking tour of Seville, admission to the Royal Palace and a day trip to Granada, which includes a guided tour of the world famous Alhambra Palace and the Generalife Gardens, and lunch at the Parador San Francisco Restaurant. The CLE flyer with all of the details for this outstanding program and trip is available online at www.chicagobar.org. The deadline for making reservations at the Majestic Hotel in Barcelona is in early February. For more information, contact

THE FUTURE OF AMERICA'S THEATRE

CBA Members: Community Partner Discount to plays at The Theatre School at DePaul University!

There's more online: **theatre.depaul.edu**

THE THEATRE SCHOOL

CONTEMPORARY PLAYS, CLASSICS AND NEW WORK

Metamorphosis
by Franz Kafka
directed by Kelvin Wong
February 6 - 15, 2015
previews 2/6 & 2/5

The Dutchess of Malfi
by John Webster
directed by Lavina Jadhwani
April 17 - 26, 2015
previews 4/15 & 4/16

Video Galaxy
by Jared Hecht
directed by John Jenkins
May 22 - 31, 2015
previews 5/20 & 5/21

CBA Discount Ticket Price: $12

box office 773.325.7900
at The Theatre School's Fullerton Stage, 2350 N. Racine, Chicago

Discount is also available for ***Elemeno Pea*** and ***MFA15: Title TBA*** in the Healy Theatre at The Theatre School.

Lisa Portes, Artistic Director

CHICAGO PLAYWORKS

FOR FAMILIES AND YOUNG AUDIENCES

Symphony of Clouds
by Margaret Larlham
directed by Ann Wakefield
January 13 - February 21, 2015
Recommended for all ages.

The Day John Henry Came to School
by Eric Pfeffinger
directed by Ernie Nolan
April 7 - May 16, 2015
Recommended for ages 8 and up.

CBA Discount Ticket Price: $8

THE THEATRE SCHOOL AT DePaul University

box office 312.922.1999
at DePaul's Merle Reskin Theatre, 60 E. Balbo Drive,Chicago

Tamra Drees at 312/554-2057.

50th Anniversary Gala Celebrating the Civil Rights & Voting Rights Acts

The Chicago Bar Association, Cook County Bar Association, Black Women Lawyers' Association of Greater Chicago and other area bar associations are co-hosting the 50th Anniversary of the Civil Rights and Voting Rights Acts with a Gala Dinner on Thursday, April 30, 2015 at the Hilton Chicago. Dr. **Otis Moss, Jr**., theologian, pastor and civic leader, will be the keynote speaker at the dinner. Moss is well known for his leadership of America's Civil Rights Movement and participated in the Selma, Alabama Civil Rights March with Dr. Martin Luther King. Moss was a close friend of Dr. King, served as the regional director of the Southern Christian Leadership Conference, and is one of America's most influential black ministers.

In addition, we will honor Mrs**. Juanita Abernathy**, wife of the late Dr. Ralph Abernathy, at the dinner. Dr. Abernathy led the Southern Christian Leadership Conference after the assassination of Dr. King. The Civil Rights Act was signed into law by President Lyndon B. Johnson in 1964 and outlawed discrimination based on race, color, religion, sex or national origin. The Act also ended unequal application of voter registration and racial segregation in our nation's schools. The Voting Rights Act, considered by many to be the most effective piece of civil rights legislation ever enacted in the United States, was signed into law by President Johnson in 1965. We will also honor President Johnson's daughter **Lynda Bird Johnson Robb** and her daughter **Catherine Lewis Robb** at the Gala Dinner.

United States District Court Judge **Sharon Johnson Coleman** and **Brenda A. Russell**, Director of PricewaterhouseCoopers, LLP, co-chair this very special celebration. Save the date and plan on joining your colleagues from the bench, the bar, and our community in commemorating these historic Acts.

Earl Burrus Dickerson Award Luncheon

Illinois Appellate Court Justice **Shelvin Louise Marie Hall** will receive the 2015 Earl Burrus Dickerson Award at this year's Award Luncheon on Tuesday, February 24, in the Grand Ballroom at The Standard Club. Judge **E. Kenneth Wright, Jr**., Presiding Judge of the Circuit Court's First Municipal Division, chairs the Dickerson Committee and will present the 2015 Dickerson Award with CBA President Daniel A. Cotter to Justice Hall. Join your colleagues from the bench and the bar in honoring Justice Hall for her extraordinary leadership and contributions to the legal profession and to our community. A reception for Justice Hall will begin at 11:30 a.m., followed by the luncheon in the Grand Ballroom. Tickets for the Dickerson Award Luncheon are $65 per person or $650 for a table of ten. For more information or to make reservations, contact Events Coordinator Tamra Drees 312/554-2057 or tdrees@chicagobar.org.

Rodgers & Hammerstein "Something Wonderful" Concert at Chicago's Orchestra Hall/Symphony Center

The Chicago Bar Association is proud to be the only bar association in the United States with its own Symphony Orchestra. Now in its 28th year, the Association's Symphony Orchestra, led by nationally acclaimed maestro **David Katz**, is comprised of more than 60 very talented lawyers and judges. On Sunday, April 26, 2015 at 7:30 p.m., the CBA's Symphony Orchestra will be joined by our 100 member Chorus, led by Director **Rebecca Patterson,** and by the Elgin Chorus and its Master Chorale Director **Andrew Lewis,** for what promises to be a phenomenal special performance of "Something Wonderful" featuring the music of Rodgers and Hammerstein at Chicago's Orchestra Hall/Symphony Center. Also performing with the Orchestra and Chorus will be award-winning soloists of "The American Prize in Voice." Tickets may be purchased via the Chicago Symphony Orchestra website, www.cso.org.

Congratulations

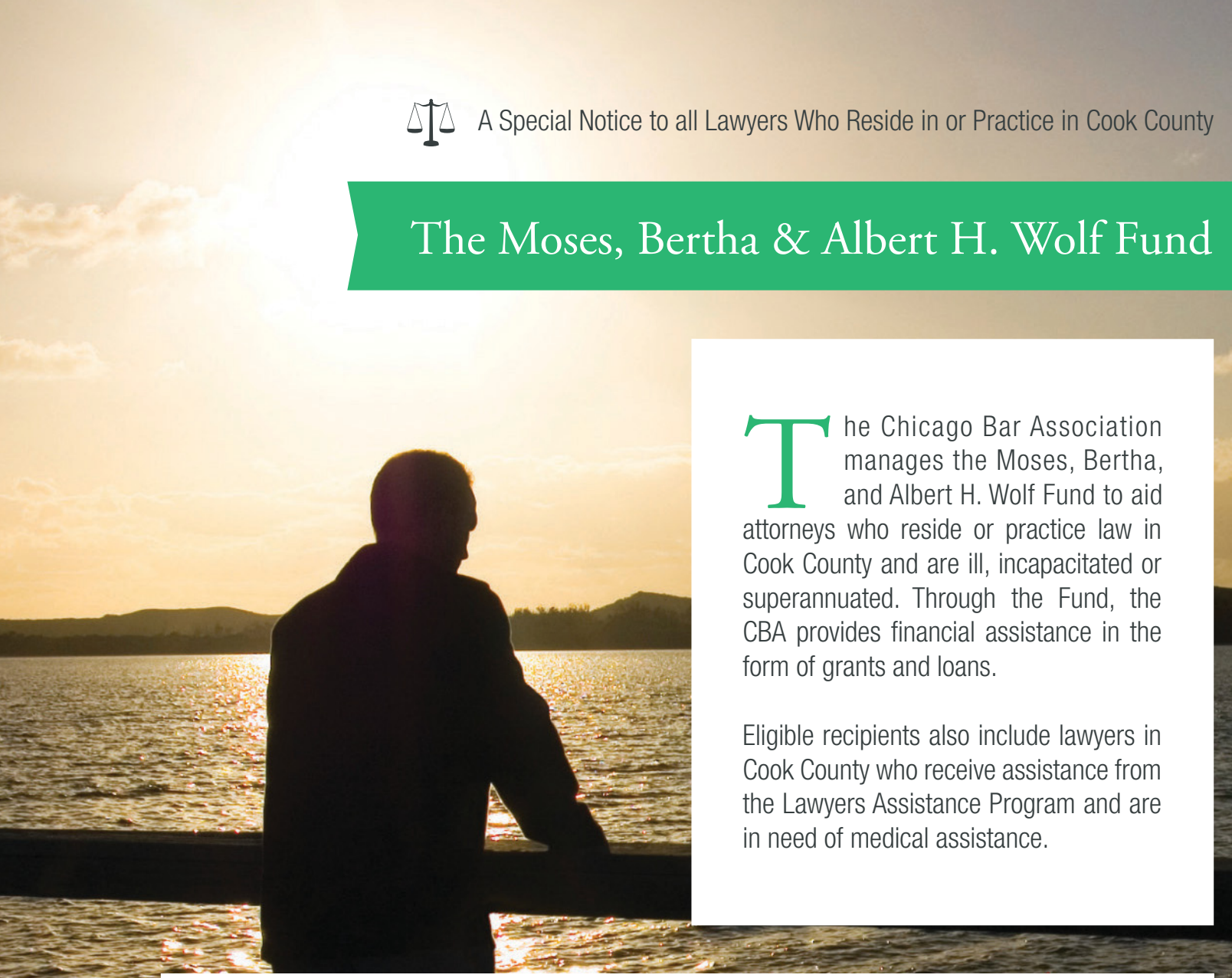
CBA Past President **Aurora Abella-Austriaco,** who was recently recognized as one of the top 100 influential women in Chicago, is the 2015 recipient of the Pan Asian American's Ping Tom Memorial Award...

CBA Treasurer **Steven M. Elrod**, Executive Partner at Holland & Knight, was selected by the Leading Lawyers Network as the number one Land Use and Zoning Lawyer in Illinois...**Brett J. Hart**, Executive Vice-President, General Counsel and Secretary of United Airlines, is the 2015 Chairman of The Chicago Bar Foundation's Investing in Justice Campaign...Justice **Abner Mikva** (retired)**,** who has served in all three branches of government, received the Presidential Medal of Freedom from President Barack Obama...**O. Kate Tragesser** is the new Executive Partner in charge of the Chicago office of Krieg DeVault LLP...**Adam P. Beckerink** and **Jennifer L. Ilkka** are new partners at Reed Smith LLP...**Randall R. Fearnow** is a new partner at Quarles & Brady LLP...**Anne M. Zehr**, Chair of the CBA's Energy, Telecommunications and Water Committee, has become a partner at Whitt & Sturtevan.

The Asian American Coalition of Chicago is hosting its 32nd Conference on Business and Networking at the Hyatt Regency O'Hare...Circuit Court Judge **Cynthia Y. Cobbs** was recently appointed to the Illinois Appellate Court, First District...U.S. District Court Judge **Sharon Johnson Coleman** and **Martin V. Sinclair, Jr**., an associate at Skadden Arps Slate Meagher & Flom LLP, were appointed by the Illinois Supreme Court to the Commission on Professionalism... Judge **Debra B. Walker,** Chair of the 15 Member Commission on Professionalism, and John Marshall Law School Dean

A Special Notice to all Lawyers Who Reside in or Practice in Cook County

The Moses, Bertha & Albert H. Wolf Fund



The Chicago Bar Association manages the Moses, Bertha, and Albert H. Wolf Fund to aid attorneys who reside or practice law in Cook County and are ill, incapacitated or superannuated. Through the Fund, the CBA provides financial assistance in the form of grants and loans.

Eligible recipients also include lawyers in Cook County who receive assistance from the Lawyers Assistance Program and are in need of medical assistance.

"I can say without hesitation that the generous support that I have received from the Wolf Fund has enabled me to receive medical treatment for several disabling conditions and prevented me from becoming homeless. My hope is that I will be able to return to the full–time practice of law and someday make a substantial contribution to The Chicago Bar Association's Wolf Fund in return for all the help they have given me. I am ever so grateful."

– Wolf Fund Recipient

THE CHICAGO BAR ASSOCIATION

For more information, please contact Terrence M. Murphy, Executive Director
312-554-2002 • tmurphy@chicagobar.org

How to Be Prepared for Traffic Court

Before you head to Cook County Traffic Court, watch this short video on how to be prepared and present yourself in a professional, organized manner. Presented by the CBA and the Illinois Judges Association. Watch now on the CBA's YouTube Channel (link at www.chicagobar.org).

John E. Corkery, were reappointed to the Commission...**Jeffrey A. Schulkin** has become a partner at Monday Nathan & Schulkin…**Willie Miller**, Senior Vice-President and Deputy General Counsel of Mondelez International and founding member of the Institute for Inclusion in the Legal Profession, is retiring from Mondelez International...CBA Past President **Patricia C. Bobb**, **Donald Segal**, Segal McCambridge Singer & Mahoney, Ltd., and Judge **William D. Maddux** (retired) received the *Jury Verdict Reporter's* 2014 Lifetime Achievement Award...**Edward S. Wildman** and **Locke Lord** have merged...**Jay B. Ross** was honored by Chicago's City Council and will have a street at Grand & Green Avenue named after him...**Joseph F. Mirabella, Jr**. and **Christine M. Ory** received the Beacon of the Profession Fellows Award from the DuPage County Bar Foundation...**Jason M. Koransky** is a new associate at Pattishall McAuliffe.

YLS Chair **Paul J. Ochmanek's** "Suits For Success" program was a huge success with more than 400 suits being donated–a big thanks to **The Cleanery** in Rosemont, Illinois for their help in cleaning the suits, which were distributed to high school kids**...**Judge **Grace Dickler**, Presiding Judge of the Circuit Court's Domestic Relations Division, received the Illinois Bar Foundation's J. Nelson Wood Award for Distinguished Service to Law and Society...**Maryam Ahmad** was recently appointed a Circuit Court Judge. **Alison C. Conlon** and **Rossana P. Fernandez** will be appointed in February...**Diana C. White**, Executive Director of the Legal Assistance Foundation of Chicago, received the Public Interest Law Initiative's (PILI) Pro Bono Initiative Award...**Andrew W. Vail**, Jenner & Block LLP, received PILI's Distinguished Fellow Alumni Award...**Matthew T. Jenkins**, Corboy & Demetrio P.C., received PILI's Distinguished Intern Alumni Award...**Maurice Grant,** formerly Grant Schumann, LLC, is now Grant Law, LLC…**Ron Austin** has become a partner at Grant Law...CBA Past President **Thomas A. Demetrio** was named "Top 50 Litigation Trailblazers" by the *National Law Journal* along with **Fred Bartlitt**, Bartlitt & Beck, **Tony Valukas**, Jenner & Block, and **Dan Webb**, Winston & Strawn.

The weather outside may have been frightful, but on December 18, the CBA's Young Lawyers gathered at the law offices of Taft Stettinius & Hollister for amazing views and holiday conversations. The event was sponsored by Advanced Discovery. Among those in attendance were (top, L-R) Judge Thomas Mulroy, CBA Past President J. Timothy Eaton, YLS Chair Paul Ochmanek, *YLS Journal* Co-Editor Jonathan Amarilio, (above, L-R) Cima Dairanieh, Oliver Khan of the YLS Insurance Committee, and *YLS Journal* Co-Editor Geoff Burkhart. Photos by Bill Richert.

Condolences

Condolences to the Family and Friends of **Thomas J. Durkin**, Judge **John J. Mannion**, Judge **Ronald J.P. Banks** and **Patricia Abella.** ■

Something Wonderful

The Music of Rodgers & Hammerstein

The Chicago Bar Association
Symphony Orchestra and Chorus

David Katz music director / Rebecca Patterson chorus director

Elgin Master Chorale

Andrew Lewis music director

And featuring award-winning soloists of
The American Prize in Voice

Sunday 4/26/15	ORCHESTRA HALL SYMPHONY CENTER	7:30 PM	Nearly 300 lawyer-musicians & friends join together for an evening guaranteed to be filled with joyous melody & song. Visit www.cso.org/ticketandevents to order your tickets today.

By Michael P. Cogan

Loss of Society in Death Cases

The Paradox of the Rebuttable Presumption

Illinois not only recognizes the loss of a loved one as compensable injury, but creates a rebuttable presumption of a substantial pecuniary loss when the decedent leaves a direct lineal heir or spouse. At the same time, Illinois courts have done little to clarify the effect of the presumption or the quantum of evidence required to rebut this presumption. This article addresses how courts have treated this rebuttable presumption and suggests practical strategies for proving substantial pecuniary loss.

THE CONCEPT OF REBUTTABLE PRESUMPTIONS

is not new in legal theory. Courts often allow a party to establish a prima facie case and force the opposing party to produce contrary evidence to avoid an unfavorable verdict. *Flynn v. Vancil,* 41 Ill. 2d 236, 239, 242 N.E.2d 237, 240 (1968). And in the Wrongful Death Act, Illinois common law has created a rebuttable presumption of a substantial pecuniary loss that applies where a decedent leaves a direct lineal heir or spouse. The presumption applies to spouses (*Hall v. Gillins*, 13 Ill. 2d 26, 31, 147 N.E.2d 352, 355 (1958), parents of minor children (*Bullard v. Barnes*, 102 Ill. 2d 505, 515, 468 N.E.2d 1228, 1233 (1984), parents of adult children (*Jones v. Chicago Osteopathic Hosp.*, 316 Ill. App. 3d 1121, 1137, 738 NE2d 542, 555 (1st Dist. 2000); *Finley*, 151 Ill. 2d at 103-04, 601 N.E.2d at 702), and children for loss of society of their parent (*Cooper v. Chicago Transit Authority*, 153 Ill. App. 3d 511, 519, 505 N.E.2d 1239, 1244 (1st Dist. 1987).

Importantly, although Illinois law creates a rebuttal presumption of pecuniary loss as a general matter, it provides no guideposts for calculating the pecuniary loss. At the same time, the range of damages under the umbrella of pecuniary loss is broad, encompassing loss of instruction; moral, physical and intellectual training; and society, including companionship, love, affection, guidance and security. *Dotson v. Sears Roebuck and Co.*, 157 Ill. App. 3d 1036, 1044, 510 N.E.2d 1208, 1213 (1st Dist. 1987). For example, under Illinois Pattern Jury Instructions (IPI Civil 31.04), which recognize the presumption, the fact-finder can consider the following in calculating damages:

> Money, benefits, goods and services the decedent customarily contributed in the past and was likely to have contributed in the future; the decedent's personal expenses and other deductions; instruction, moral training, and superintendence of education the decedent might reasonably have been expected to give had he/she lived; decedent's age, sex, health, habits of industry, sobriety, and thrift; occupational abilities; the grief, sorrow, and mental suffering of the next of kin; the relationship between lineal next of kin and the decedent; and the marital relationship that existed with the decedent.

Nonetheless, the rebuttable presumption of pecuniary loss sets neither a floor nor a ceiling for the actual damages calculation. And this has sharply undermined its intended effect: to give the plaintiff the advantage of presumed damages.

The Practical Consequences of a Rebuttable Presumption

Although the Illinois Supreme Court has affirmed the existence of a rebuttable presumption of pecuniary injury, the practical consequences of this presumption are unclear. In some cases, surviving family members have been awarded low or no damages, even in the absence of rebuttable evidence.

For example, in *Passow v. Glaser* (which was litigated by this author), the court affirmed a zero award, despite the presence of a rebuttable presumption of pecuniary injury. In *Passow,* 48-year-old woman died from a perforated bowel allegedly caused by her physician's malpractice. Her two adult daughters testified that they had an extremely close relationship with her at the time of her death and were in contact on an almost daily basis. They also testified that she was actively involved in their children's lives as well. Her husband also testified to a close marital relationship.

On the other hand, negative evidence included the fact that her daughters opted to live with their father after their parents' divorce and then lived on their own. The daughters also faced teen pregnancy, which initially strained the relationship. Additionally, the decedent and her husband had ended a six-month separation within their home and had undergone counseling during the midpoint of their marriage. Moreover, there was little cross-examination, and none of it concerned any of the familial relationships. Defendants provided no independent evidence controverting the family's testimony.

Nonetheless, the jury awarded nothing to the decedent's daughters and her spouse for this element of damages. The Second District upheld the verdict in the *Passow* case, while also forgoing an opportunity to flesh out the law on rebuttable presumptions. In an opinion unpublished under Rule 23, the court held where there was sufficient evidence to rebut the presumption of plaintiffs' substantial pecuniary loss because of decedent's death, the jury's

award of no damages for loss of society was not against the manifest weight of the evidence. *Passow v. Glaser*, No. 2-09-1178, 2011 WL 10101872 (March 11, 2011). The court simply indicated that the presumption was rebutted by a credibility assessment, which was sufficient because "in committing the assessment of damages to the discretion of the jury, the law also commits to the jury the assessment of the credibility of the witnesses." *Passow* at *5.

At the other end of the spectrum, courts have made significant awards based on less than compelling evidence. In *McKinnis v. United States*, the adult children's contact with their father was limited to occasional visits and phone calls. No. 06 cv 4965 (N.D. Ill. Dec. 10, 2008). They did not even visit him in the hospital before he died–yet the court considered this relationship sufficient to award $150,000 per adult child.

What Constitutes Adequate Rebuttal?

Few cases address the evidence necessary to rebut the presumption of loss of society. Illinois case law establishes that estrangement is one, but not the exclusive, method for rebutting the presumption of loss of society. If there is a claim of estrangement, a defendant may elicit affirmative evidence that the decedent and her children had not reconciled through the testimony of a third party, e.g., a relative or a close friend.

In *Watson v. South Shore Nursing & Rehabilitation Center,* 2012 IL App (1st) LEXIS 103730, 965 N.E.2d 1200, the appellate court held that a zero damage award for loss of society was against the manifest weight of the evidence, where the decedent's daughters as well as defendant's employees had testified to the close relationship the women shared with their father. The defendant contended that the daughters' testimony focused on the relationship they had had with their father as children and their grief at his death, which the defendant contended were not compensable. The court noted that the daughters had testified to a continuing relationship with their father throughout the time he was in defendant nursing home and up to the time of his death, and observed that no evidence was presented to rebut their testimony. In reversing the trial court's award of zero damages, the court held that a "jury may not arbitrarily reject the testimony of an unimpeached witness." Significantly, the *Watson* court relied on *People ex rel. Brown v. Baker*, where the court held that if "the testimony of a witness is neither contradicted, either by positive testimony or by circumstances, nor inherently improbable, and the witness has not been impeached, that testimony cannot be disregarded even by a jury." As *Watson* underscored, a jury that awards zero damages where there is no testimony to raise a contrary inference or question the plaintiff's credibility has ignored a proven element of damages.

On the other hand, the court in *Smith v. Mercy Hosp. & Medical Center* indicated (like the court in *Passow*), that "implicit in the right to weigh the presumption is the right to give it no weight at all." 203 Ill. App. 3d at 477. Indeed, the *Passow* decision also discourages plaintiffs from fully testifying to their loss of society, as the jury may give the testimony no weight at all, or simply disbelieve it, thereby defeating the plaintiff's claim.

Practical Trial Strategies to Avoid a Zero Damage Award

To avoid the devastating result of *Passow,* plaintiffs should not rely on the perceived advantage of the rebuttable presumption. Rather, they should offer as much independent proof of loss of society as possible. For example, if the plaintiffs testify to multiple telephone calls per week, then admit the telephone records. If the plaintiffs attest to family outings or regular events shared with the decedent,

WHAT'S YOUR OPINION?

Send your views to the **CBA Record,** 321 South Plymouth Court, Chicago, IL 60604. Or you can e-mail them to dbeam@chicagobar.org. The magazine reserves the right to edit letters prior to publishing.

then produce photographs, videos, calendars, cards and letters. In this digital age, it should be easy to obtain e-mails and even postings from social networking sites such as Facebook, reflecting regular positive communication or depicting family events where the decedent was present. Of course, when opening the Pandora's box of the Internet, make sure that these sites are thoroughly vetted before exposing them to the scrutiny of the defendants. Testimony of an uninterested third party, so long as it overcomes hearsay objections, also bolsters loss of society evidence. Remember, the *Passow* court criticized the absence of corroborating evidence from the very young grandchildren, so plaintiffs should avoid any perception that they failed to call corroborating witnesses, such as close family friends or ministers. *See Eaglin v. Cook County Hosp.*, 227 Ill. App. 3d 724, 592 N.E.2d 205 (1st Dist. 1992) (family pastor testified to relationship; $1.5 million verdict to 14 family members upheld). It bears noting that the *Watson* court relied, in part, on testimony of defendant's employees that corroborated the plaintiffs' description of their close-knit family.

It is wise to avoid any evidence of estrangement, unless the defendant specifically elicits it. *See Watson* (court expressly noted that no rebuttal testimony was offered to show any estrangement between the decedent and his daughters) and *Calloway v. Bovis Lend Lease, Inc.*, 2013 IL App (1st) 112746, 995 N.E.2d 381, 417 (1st Dist. 2013) *appeal denied,* 116815, 2014 WL 466522 (Ill. Jan. 29, 2014) (despite some evidence of estrangement, based on the evidence and the presumption of pecuniary loss, the court could not say that the jury's award of $2 million in pecuniary damages was against the manifest weight of the evidence). If estrangement becomes an issue, the plaintiff should refocus the evidence on the relationship of the parties at the time of death and emphasize the strength of a relationship that has weathered such storms and managed to recover.

Further Guidance Needed

Illinois courts have more to do on the topic of the rebuttable presumption of substantial loss of society damages in wrongful death cases. Indeed, although courts routinely reaffirm the presumption, they have provided little guidance for its practical effect in calculating the amount of damages. To that end, courts should also provide further guidance for the type of evidence that would be sufficient to functionally overcome the presumption of pecuniary injury and result in a low or no-damages award. ■

Michael P. Cogan represents victims of medical malpractice and personal injury at Cogan & Power, PC in Chicago

Police Conduct & the Search for Equal Justice

Thursday, February 5, 12:00–2:45 pm

MCLE Credit: 2.5 IL MCLE Credit

Location: The Chicago Bar Association, 321 South Plymouth Court, Chicago, IL 60604

Register at www.chicagobar.org/cle

The perception that the state's criminal justice machinery breaks down when faced with the prosecution of police for actions stemming from the execution of their duties strikes at the heart of the fundamental constitutional principle of equal justice under law.

How can police forces and officers maintain their moral and social legitimacy when communities across the country-white, black, and otherwise-have begun to believe that police are literally subject to a different law from that applied to everyday citizens? To what extent is this legitimacy gap real or perceived? To the extent that it is real-and thus a critical threat to the American way of life-how must the legal and constitutional framework adapt in order to restore the faith of all communities in the criminal justice system as a whole? This seminar intends to address these questions as part of the broader conversation that must occur regarding the resolution of this social and legal crisis.

Moderator: Noah J. Graf, Esq.; Chair and Legislative Liaison, Civil Rights and Constitutional Law Committee

Happy New Year

By Paul J. Ochmanek, Jr. YLS Chair

Well, it's January–where did 2014 go? It feel like yesterday I was training for the Shamrock Shuffle, and now leaves have fallen and we have snow on the ground. For the past eight years, my Christmas season started with the CBA Bar Show–the first six as a cast member, the last two as an audience member. For those unfamiliar with the show, imagine "SNL" focusing on hot button topics in Chicago and the world at large.

Aside from its longevity (91 years and running), what is so amazing about the show? It's written and performed by lawyers and judges in the Chicago area! Sometimes we get so caught up working and serving clients that we forget lawyers have lives outside of the office. It's incredible to see the talented writers, singers, dancers, and actors in action–remembering that most have full-time positions and family commitments. Nonetheless, these CBA members devote countless hours practicing to light up the stage the first week in December. Congratulations to the cast on another great show. I recommend you see next year's Show, as it's sure to delight.

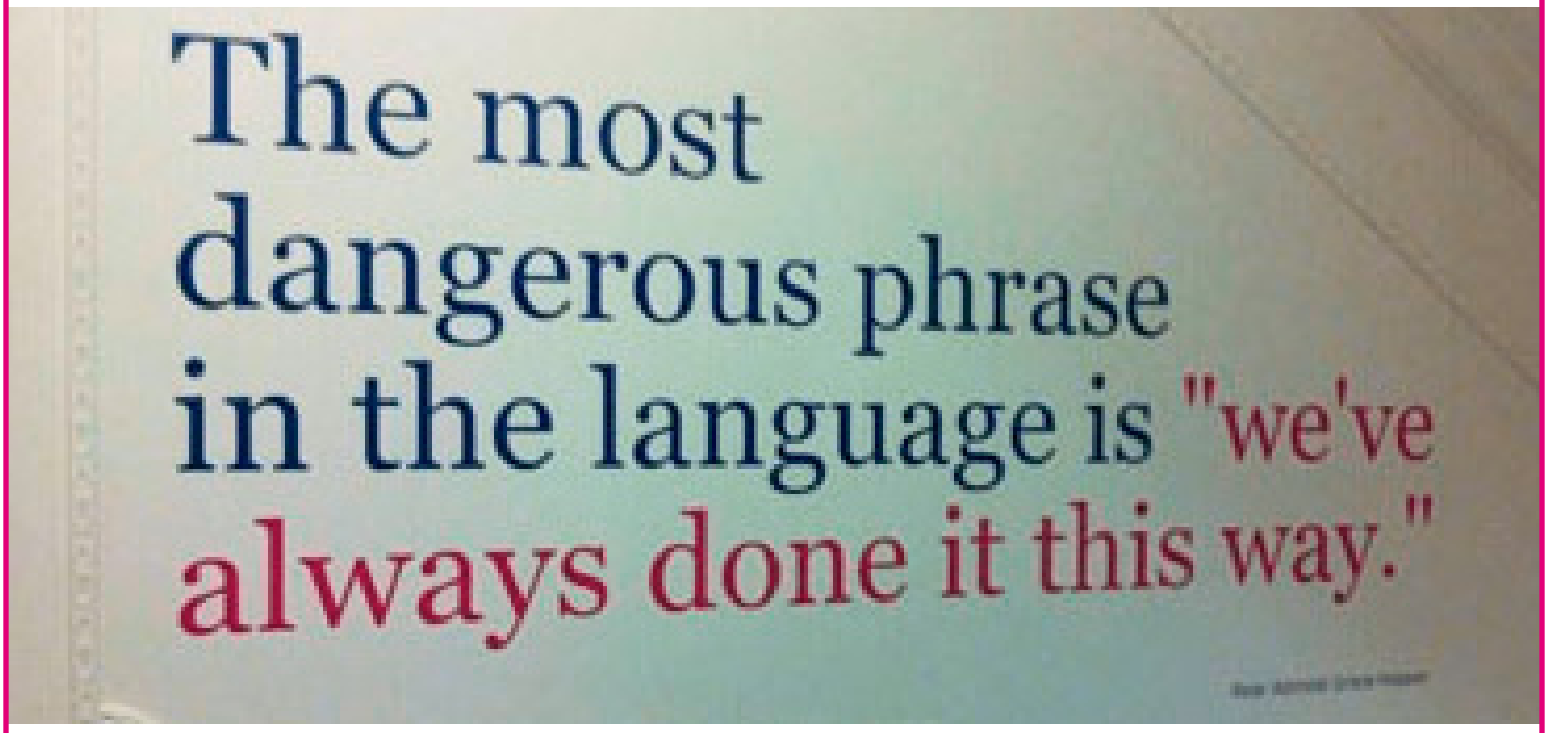
I hope that we were all taught to be a little more loving, open, and giving during the holiday season. I'm reminded of Robert Fulghum's book *All I Really Need to Know I Learned in Kindergarten.* Fulghum emphasized the importance of (1) sharing, (2) playing fair, (3) not hitting people, (4) putting things back where you found them, (5) don't take things that aren't yours, and (6) say you are sorry when you hurt somebody. These are simple in thought but difficult in practice.

I question whether people recall what they learned in kindergarten when I watch the news and see rioting, protesting, and looting due to the recent decisions in New York and Missouri. Our Constitution provides us with free speech and the ability to gather, thereby permitting lawful protesting, which can be impactful and meaningful. By contrast, looting and rioting only take away from the overall message of lawful protest. The rioting takes center stage, oftentimes distancing groups by attacking those unrelated to the central issue. It's easy to point the finger at others, become caught up in the mob mentality, and take aggressive action against the wrong parties. However, it is not as easy to analyze one's own actions and thoughts and to point the finger inward.

The holidays afforded us multiple opportunities to gather and socialize. This time can also be spent considering what we hoped to accomplish throughout the year and lessons we have learned. In August, I challenged readers to get involved in some organization and to participate in some project. Please consider adding this to your 2015 goals. So many organizations need assistance. There must be an organization out there that fits your abilities and time commitment.

The YLS and its members have accomplished so much in such a short period of time. I look forward to 2015 and the several new projects we are undertaking, none of which could be accomplished without the support of our CBA staff and YLS volunteers. Thanks to each and every one of you for your efforts and dedication throughout this bar year. It has been a pleasure serving as Chair of the YLS this year and working with you. ■

Young Lawyers Section's
Future of the Profession Week



Innovative Pricing Techniques: Moving Away from the Billable Hour
February 17, 2015 / 3:00-4:30 p.m.
1.25 IL PR Credit, subject to approval
In-person at CBA Building
Learn how you can develop new pricing structures that provide both value to clients and make your practice more profitable, especially when litigation is involved.

Elementary, My Dear Watson: Expert Systems, Process and Knowledge Management
February 18, 2015 / 12:00-1:30 p.m.
1.25 IL PR Credit, subject to approval
In-person at the CBA Building / Webcast
Discover how you can use expert systems and knowledge management to expand your client services, based on the digitized summation of your firms know how.

How Practicing Differently Can Improve Your Client Development
February 19, 2015 / 12:00-1:30 p.m.
1.25 IL PR MCLE (subject to approval)
In-person at CBA Building / Webcast
Non-traditional methods of client development, including mobile outreach, alternative office settings, hybrid businesses and more.

Free Your Mind: New Ways to Attract and Serve Clients
February 20, 2015 / 11:30-12:30 p.m.
0.75 IL PR Credit, subject to approval
In-person at the CBA Building
Explore new ways of serving your client base including meeting in cyberspace. Best practices, challenges, cost-benefits and more.

Future of the Law Expo
Free!
February 20, 2015
10:30 a.m. - 2:30 p.m.
Visit with the companies that provide services and products that can help you make headway into the future. From predictive coding to visual legal research to expert systems and analytics, you will find experts offering system that will help you launch your firm forward: DirectLaw, Justice Entrepreneur Project, Draft Once, Neota Logic, Ravel Law, Avvo and Business Law Network.

Free for CLE*Advantage* members. See pricing online.
Register at www.chicagobar.org/ylsfuture.

The Young Lawyers Section
YLS
The Chicago Bar Association

THE DOUBLE-EDGE SWORD OF VICTIM SURVIVAL

Imperfect Self Defense

By Christopher Kopacz and Elena Penick

One would assume that the punishment for a shooting would be harsher if the victim died than if he or she survived. Due to an anomaly in Illinois law, however, that is not always the case. In *People v. Guyton*, 2014 IL App (1st) 110450, the defendant fired a gun in the direction of two people, killing one and nicking the other. The sentence he received for the non-fatal shooting was twice as high as the sentence he received for the homicide, yet both convictions and sentences were upheld on appeal. This article addresses the counterintuitive results of *Guyton* and offers suggestions to practitioners faced with a similar scenario, where an attempted killing is arguably accompanied by the mitigating factors traditionally associated with second degree murder.

Guyton's Trial

In Illinois, second degree murder is a lesser mitigated form of homicide that requires the State to prove the elements of first degree murder beyond a reasonable doubt and requires the defendant to prove that he was acting either (a) under a sudden and intense passion resulting from serious provocation; or (b) under the unreasonable belief that circumstances exist that would justify or exonerate the killing under self defense principles. The latter type of mitigation, often called "imperfect self defense," was at issue in *Guyton*.

Kasey Guyton was charged with the first degree murder of Adam Saldivar and the attempt first degree murder of Edner Flores. There was no question that Guyton shot Saldivar and Flores; the issue was whether he was acting under a belief in the need for self defense. The evidence at trial showed that Guyton's car collided with a van occupied by Saldivar and Flores. An argument ensued and the men drove away. Guyton testified that several minutes later, he was walking down the street when the

van approached again and he saw Flores reach down with his right arm. Fearing that the van would strike him, Guyton fired several gunshots at the van. Saldivar received a fatal gunshot to the head, while Flores was superficially injured.

A jury found Guyton guilty of second degree murder with respect to Saldivar on the basis that Guyton, while engaging in conduct that would otherwise constitute first degree murder, was acting on an actual, albeit unreasonable, belief in the need to defend himself. However, as explained below, this imperfect self defense claim is only available to mitigate completed homicides and not attempted homicides. Thus, Guyton's shooting at Flores resulted in a verdict for the more serious offense of attempted first degree murder. The trial judge sentenced Guyton to 36 years in prison for attempting to kill Flores, but only 18 years for the completed killing of Saldivar.

An Anomaly Explained

How did this seemingly disproportionate result happen? It stems from Illinois' failure to recognize the offense of attempt second degree murder, which in turn derives from the attempt statute:

> A person commits the offense of attempt when, *with intent to commit a specific offense,* he or she does any act that constitutes a substantial step toward the commission of that offense.

720 ILCS 5/8-4 (emphasis added). First in *People v. Reagan*, 99 Ill. 2d 238 (1983), and later in *People v. Lopez*, 166 Ill. 2d 441 (1995), the Illinois Supreme Court construed the above clause to mean that intent must be layered upon *each element* of the attempted offense. Applying this reasoning to voluntary manslaughter (*Reagan*) and second degree murder (*Lopez*), the Court concluded that attempting those offenses is not possible because one cannot logically *intend* to have an unreasonable belief in the need for self defense or *intend* to act under a sudden and intense passion resulting from serious provocation. Thus, the Court has taken the view that the offense of attempted second degree murder does not exist in Illinois.

Less clear from the Illinois Supreme Court's decisions is what offense, if any, is supported by evidence that an attempted killing was accompanied by the mitigating factors traditionally associated with second degree murder. Writing separately in *Lopez*, Justice McMorrow remarked that the majority's analysis sanctioned an attempted first degree murder conviction in cases where imperfect self defense was raised. *Lopez*, 166 Ill. 2d at 457 (McMorrow, J., concurring in part, dissenting in part). However, under the majority's view of the attempt statute, a conviction for attempted first degree murder would require the defendant to have intended the killing to be without justification. Significantly, the majority also recognized–albeit in the context of attempted second degree murder–that intent to kill without justification is incompatible with a belief in the need for self defense. *Lopez*, 166 Ill. 2d at 448-449. Furthermore, while the majority acknowledged the possibility that an attempted killing could result in a stiffer sentence than a completed killing, the Court appeared to entertain this hypothetical only in cases where passion/provocation was raised. Thus, *Lopez* generated confusion as to whether defendants such as Guyton who are acting in a belief in the need for self defense should be convicted of attempted murder (a Class X felony) with respect to a surviving victim, or acquitted entirely.

An Attempted Legislative Fix

In response to the holdings in *Lopez* and *Reagan*, the legislature in 2010 enacted a new statutory provision, 720 ILCS 5/8-4(c)(1)(E), based on the recommendations of the CLEAR Commission, a body the legislature had tasked with proposing broad reforms to the criminal code. Under this provision, a defendant convicted of attempted first degree murder would have the opportunity to mitigate the offense *at sentencing*. If the defendant could prove by a preponderance of the evidence that he acted in response to serious provocation, the offense would be reduced to a Class 1 felony, punishable by 4 to 15 years. The legislature thus reduced the vast sentencing disparity between completed killings and attempted killings, at least with respect to the serious provocation prong. And by placing the mitigation issue at sentencing, it did so without disturbing *Lopez's* holding that Illinois does not recognize the substantive offense of attempt second degree murder.

Following the CLEAR Commission's proposal, Judge Michael Toomin, a member of the commission, explained that no special sentencing provision was necessary for the imperfect self defense factor, because a defendant who attempts to kill someone with an unreasonable belief in self defense lacks the requisite specific intent to kill necessary for attempt first degree murder. *See* Toomin, *Second Degree Murder and Attempted Murder: CLEAR's Efforts to Maneuver the Slippery Slope*, 41 J. Marshall L. Rev. 659 (2008). Thus, under Judge Toomin's view, such a defendant should be acquitted of attempted first degree murder.

Guyton's Appeal

Guyton raised a number of arguments in his appeal to Illinois' First District Appellate Court. Notably, Guyton adopted Toomin's view of attempted first degree murder, arguing that his conviction should be reversed outright where the jury's finding imperfect self defense with respect to the fatal shooting of Saldivar showed that he did not have the specific intent to kill Flores without justification. In other words, because Guyton's mental state did not change between the time he fired at Saldivar and the time he fired at Flores, his belief in the need for self defense mandated an acquittal of attempt first degree murder.

The appellate court rejected Guyton's argument. The court acknowledged that Guyton's mental state did not change between the two offenses and that Guyton's convictions led to a sentencing conundrum that was recognized in *Lopez*. The court, however, interpreted *Lopez* as having authorized a conviction for attempted first degree murder, even where there is a mitigating factor present. The court also placed great reliance on the legislature's actions in the wake of *Lopez*, noting that in 2010, the legislature amended the attempt statute to address the sentencing anomaly, but did so

only with respect to the serious provocation mitigating factor. The legislature did not amend the statute to include the imperfect self defense mitigating factor. From this omission, the appellate court reasoned that the legislature did not wish to disturb that aspect of *Lopez*.

Tips for Practitioners

Guyton lays bare in a single case the unfairness that results from Illinois' failure to recognize an offense of attempted second degree murder. The defendant's single act of shooting led to penalties that were dramatically disproportionate to the harm done to the victims. This decision therefore offers a number of lessons for members of the defense bar who come across a case in which an attempted killing may be justified in part by those factors that would ordinarily reduce first degree murder to second degree murder.

Most importantly, a practitioner should determine whether the defendant can benefit from the new sentencing provision found in 720 ILCS 5/8-4(c)(1)(E). If so, it is critical that the attorney does not wait until sentencing to advance a claim of serious provocation, but incorporates that theory throughout the trial so as to avoid claims of forfeiture. Indeed, Guyton's attempt to invoke this provision on appeal was denied because his theory at trial was one of self defense, not serious provocation. Therefore, if possible, a trial attorney should seek to argue both serious provocation and self defense factors are present. Those mitigating provisions are closely related, as a person who acts in response to serious provocation may also be acting in the need to defend himself. Case law and pattern jury instructions plainly indicate that a defendant can argue in support of both provisions during trial, and that would place a defendant in a better position to argue provocation at sentencing. *See, e.g., People v. Thompson*, 354 Ill. App. 3d 579, 587 (1st Dist. 2004).

RESOURCES FOR NEW LAWYERS

Just getting starting in the practice of law in Chicago? Go to www.chicagobar.org, YLS, New Lawyer Resources to see our comprehensive list and links including MCLE requirements, solo start up boot-camp, career services, seminars for new lawyers, practice pointer videos, and more.

Additionally, a practitioner may argue for an acquittal on the attempted murder charge based on Judge Toomin's analysis, which calls into question the *Guyton* court's conclusion that the legislature intended to permit attempted first degree murder convictions even where the defendants actions were mitigated by imperfect self defense. Judge Toomin's reasoning may be persuasive to a trial court judge or another panel of the appellate court.

A practitioner who takes the case to a jury trial should request a non-pattern instruction that expressly informs the jury that if it finds the defendant has acted in the belief–even if unreasonable–that self defense is necessary, then it must find the defendant not guilty of attempted first degree murder. Such an argument can, of course, also be presented to the trial judge in the case of a bench trial.

The best solution to correct the sentencing anomaly for defendants who attempt a killing while acting with a mitigated mental state would come from the legislature itself. Until then, *Guyton* offers useful lessons to practitioners who encounter the bizarre scenario where a defendant faces a greater punishment because the victim survived. ■

Note: *Guyton's attorney has filed a petition for rehearing that is pending in the Illinois Appellate Court.*

Christopher Kopacz and Elena Penick are attorneys at the Office of the State Appellate Defender, First District. Kopacz is the co-author (with John F. Decker) of Illinois Criminal Law: A Survey of Crimes and Defenses

West LegalEdcenter®

Is your firm struggling to manage CLE requirements cost-effectively? MDM&C isn't. "West LegalEdcenter has become our one-stop shop for all of our CLE, for all of our offices and all of our attorneys," says Nicole. "Within our first year alone, we saved close to $100,000." West LegalEdcenter gives your firm access to thousands of learning and development programs, accredited in your firm's jurisdictions, in a variety of convenient, accessible formats.

Hear Nicole's story and view a demo of West LegalEdcenter at **westlegaledcenter.com/link/testimonial**.
Learn more about McElroy, Deutsch, Mulvaney & Carpenter, LLP at **mdmc-law.com**.

Call 1-800-241-0214, option 3 to learn more.

THOMSON REUTERS™

When the Government Mines "Big Data," Does It Conduct a Fourth Amendment Search?

By Mike Gentithes

In June of 2013, the *Guardian* revealed the first of several leaks of information obtained by former National Security Agency (NSA) employee Edward Snowden. These in part detailed the NSA's acquisition of "telephony metadata"—information about the numbers dialed and length of calls made, but not the actual content of any conversations—from multiple telephone carriers regarding United States customers, including both international and domestic calls.

Since the leaks became public, a vigorous public policy debate has erupted over the propriety of the NSA's program. One aspect of the NSA's program that has drawn less-acute public attention is its ramifications for the understanding of the term "search" in the Fourth Amendment. The government claims that, under the so-called third-party doctrine, the NSA's program does not qualify as a "search" that would trigger the Fourth Amendment's strictures.

But civil libertarians insist that the collection of data from over 325 million subscribers must be a constitutional search, or else the Constitution would fail to place any limits whatsoever upon government efforts to use big data to glean detailed understandings of citizens' daily lives. This battle is now unfolding in real time in federal courts across the country.

The Third-Party Doctrine

The government's position, accepted by the Foreign Intelligence Surveillance Court that originally authorized the program and endorsed by at least one additional federal

judge that has subsequently reviewed it in litigation, is based upon Supreme Court precedent that has narrowed the definition of a constitutional "search." Following the Court's decision in *Katz v. United States*, 389 U.S. 347, 360 (1967) (Harlan, J., concurring), a "search" has been understood to mean an activity that intrudes upon a citizen's "constitutionally protected reasonable expectation of privacy."

In the late 1970's the Court significantly narrowed the scope of that definition, and by extension the Fourth Amendment's protection, when it developed the third-party doctrine. Under the third-party doctrine, a citizen relinquishes any such privacy expectation in information that she discloses to a third party, be it a personal confidant or a business entity, even if he or she assumed that the information would be held confidentially. Thus, the government can collect information a citizen has disclosed voluntarily to a third party, including the numbers dialed, without conducting a constitutional search that might require prior judicial review. *Smith v. Maryland*, 442 U.S. 735 (1979).

Thus far, federal courts have been split as to whether the rule announced in *Smith* applies to the NSA's program. While Judge William H. Pauley III endorsed the government's logic, holding that the case was controlled entirely by *Smith*'s "clear precedent" which he was honor-bound to follow, Judge Richard J. Leon contended that *Smith* failed to address the precise factual scenario presented by the NSA's program, which concerns "evolutions in the Government's surveillance capabilities" unimaginable to the *Smith* court. *Compare ACLU v. Clapper*, No. 13-Civ-3994, at *43-44 (S.D.N.Y. Dec. 27, 2013), *with* Klayman v. Obama, No. 13-0851, at *45 (D. D.C. Dec. 16, 2013).

An Open Question

It is thus an open question whether government uses of big data to collect information about private citizens will constitute a search. It does seem clear, though, that those arguing that it does should find a way to avert the direct application of *Smith* and its progeny. They should avoid suggesting the direct overrule of the third-party doctrine, which might evoke nonplussed responses similar to Judge Pauley's.

Instead, those arguing in favor of the Constitution's application to such government programs should focus on arguments that distinguish present uses of big data from the much simpler technology at issue in *Smith* and its progeny, which could only collect a limited amount of data about a single telephone user for a short period of time.

In order to distinguish *Smith*, attorneys might make an argument premised upon the "mosaic theory" of the Fourth Amendment proposed by some scholars. That theory would distinguish non-searches, like the single phone tap in *Smith*, from broad data mining like the NSA's program by suggesting that, at some level, constant and ubiquitous monitoring paints such a detailed "mosaic" of a citizen's life that it triggers the Fourth Amendment's requirements.

While, under *Smith*, the NSA does not conduct a search when it obtains each piece of telephony metadata, mosaic theorists argue that the aggregated data concerning the phone numbers a user dials over a five-year period creates an incredibly clear picture of that user's life, one that the user *does* expect will remain private and be shielded from peering government eyes.

A majority of Supreme Court Justices offered some support for this position in *United States v. Jones*, 132 S. Ct. 945, 963-64 (2012). In that case, which concerned the warrantless, month-long use of a GPS device on a suspect's car, the Court resolved the question by holding that the police searched the defendant, because physically installing the GPS device constituted a trespass on the defendant's effects (his car). However, there appeared to be strong support among the Justices for the idea that "longer term GPS monitoring in investigations of most offenses impinges on expectations of privacy" and constitutes a search. At some unknown point, the Court seemed to acknowledge, constant and ubiquitous monitoring infringes upon privacy in a way that individual instances of the same monitoring do not.

In Defense of the Mosaic Theory

Civil libertarians should expect opposition to the mosaic theory, however. There are obvious practical concerns with any such ill-defined statement of constitutional law. Although the courts are experienced at drawing new and somewhat arbitrary constitutional lines, they may hesitate to adopt the mosaic theory because of the many questions it raises about the quantum of data the government can collect without a warrant.

Critics might also point out a glaring logical inconsistency in the mosaic theory. It seems impossible that some quantity of non-searches can somehow equal a search. One might respond that the theory is not reducible to a mathematical equation,

effectively accepting this criticism on the grounds that, at least in this realm of Fourth Amendment jurisprudence, a sum may be greater than the whole of its parts.

More plausibly, mosaic theory's supporters might claim that there is a collective Fourth Amendment interest shared by a group as large as all citizens using telecom services, one that is infringed by a program as broad as the NSA's. That collective interest is not based upon privacy, but is instead derived from the ideal of tranquility woven into the structure of the Constitution and implicit in Justice Brandeis's expression of the Fourth Amendment's primary goal—to protect citizens' "right to be let alone." *Olmstead v. United States*, 277 U.S. 438, 478 (1928) (Brandeis, J., dissenting).

The concept of tranquility explains our intuitive discomfort with big data dragnets like the NSA's telephony metadata program better than *Katz*-ian notions of privacy, especially in light of our *reduced* expectations of privacy in today's technological environment. While minor government harassment that disturbs a single citizen's tranquility may be trivial and fail to reach the level of a Fourth Amendment search, it is still a greater-than-zero intrusion upon our collective tranquility interest that, when accumulated in a program as broad as the NSA's, may be sufficient to constitute a search and trigger the Fourth Amendment's protections.

For instance, if government investigators rummaged through the trash of Citizen Doe, even on a daily basis, it may not necessarily conduct a Fourth Amendment search, because it has not invaded any reasonable expectation of privacy under existing Supreme Court case law. But if instead government officers collected and preserved each and every article of trash discarded by all citizens who availed themselves of public trash disposal services, it might intrude sufficiently upon the joint Fourth Amendment interest of all citizens using those services to constitute a search.

Is Supreme Court Adoption of the Mosaic Theory Imminent?

Would the Supreme Court ever hold that a government information collection program that becomes so broad that it captures data about practically everyone engaged in an activity that is ubiquitous in society infringes upon those citizens' collective tranquility interest so as to constitute a search? It has shown some openness to mosaic theories in general. Perhaps the Court would be willing to take this further step to resolve the arithmetic tension inherent in them. Challengers to data dragnets like the NSA's should present this argument, giving courts a sounder logical footing upon which to base rulings in favor of individual liberties. ■

Michael Gentithes is an attorney with the Office of the State Appellate Defender, focusing on criminal appeals in the state of Illinois. He previously practiced civil appellate and trial litigation as an Assistant Corporation Counsel for the City of Chicago.

Professional Responsibility in Adoption Law Practice

Wednesday, February 18, 3:00 PM - 6:00 pm

MCLE Credit: 2.75 IL PR Credit, subject to approval

Location: The Chicago Bar Association, 321 South Plymouth Court, Chicago, IL 60604

Presented by: CBA Adoption Law Committee

The complex nature of family building through adoption raises myriad ethical issues. These vary based upon the type of adoption, whether you represent the birth parent or the adoptive parent, whether you are involved in an agency or non-agency adoption, and whether the adoption involves multiple jurisdictions. Foster care and surrogacy family planning also raise novel ethical issues. This seminar will provide a basic blueprint of how to spot and address ethical issues in adoption, surrogacy and foster care representation.

This program will discuss Professional Standards in Adoption Procedure in Illinois; Types of Adoptions, Standards of Court Procedure, and Foster Care Adoptions; Ethical Issues Related to Birth Parents: Representation and Termination of Parental Rights; Multijurisdictional Professional Responsibilities: Interstate And International Adoptions; and Ethical Issues in Surrogacy and Assisted Reproductive Technology.

Speakers include: Shelley Ballard, Partner, Ballard, Desai & Miller; Nancy Hablutzel, Hablutzel and Associates; Diana Lopez, Owner/President, Lopez Law Group, P.C.; Genie Miller Gillespie, Attorney at Law; Kathleen Hogan Morrison, Kathleen Hogan Morrison, P.C.; Nidhi Desai, Partner, Ballard, Desai & Mille. ***Moderators:*** Meg Ledebuhr, Berger Schatz; Chair, CBA Adoption Law Committee; and Barbara Sereda, President, Adoption Advocates of America; Vice Chair, CBA Adoption Law Committee.

Texas Hold 'Em Tournament

Join the Young Lawyers Section at its Ninth Annual Texas Hold'em Tournament for the benefit of The Chicago Bar Foundation on Friday, January 30. Prizes will be awarded. This event will be held at The Standard Club, 320 South Plymouth Court.

$150 per person on or before Jan 23. $175 per person after Jan 23. For Reservations: call 312-554-2031 or register online at h**ttp://chicagobarfoundation.org.**

Underwritten by: *BuckleySandler LLP and Clifford Law Offices.* ***Thank you to our sponsors:*** *Chicago Daily Law Bulletin, Certus Deposition Services LLC, Colin M Finn, Mesirow Financial Structured Settlements, D4 Discovery, Corboy & Demetrio, Passen Law Group, Peck Bloom, LLC, Salvi Schostock & Pritchard, Stewart Title, and Verity Group.*

LEGAL ETHICS

BY JOHN LEVIN

Social Media–Advising Your Client

We live in the world of social media–Facebook, Twitter, YouTube and more. Consider what might happen when you have a client whose testimony is crucial to a pending case. You happen to look at his Facebook page and discover that he has posted some pictures of himself that could possibly impeach his testimony. If those pictures are put before the court or jury, they could adversely affect the case. Can you notify the client to take down the pictures? Would this violate any ethical rules? Not long ago, this question would never have arisen. Now it's a real possibility.

There have been few ethics opinions to date on this subject. However, the weight of opinion is that as long as you do not destroy evidence, introduce misleading evidence, or withhold evidence from discovery, it is ethically permissible to advise your client on the management of social media sites.

A recent opinion by the Pennsylvania Bar Association (Formal Opinion 2014-300) addressed this question (among many others). The Opinion referenced a number of Pennsylvania's Rules of Conduct (which are the same as the Illinois Rules). With respect to this issue, the citations were to Rule 3.3, 3.4 and 4.1 dealing broadly with the lawyer's obligation not to mislead the court, not to conceal or destroy evidence, and not to offer false evidence. The Opinion first concluded that the "Rules do not prohibit an attorney from advising clients about their social networking websites." In fact, Rule 1.1 implies that "a competent lawyer should advise clients about the content that they post publicly… ."

There are limits, however, to what a lawyer can ethically advise. The Opinion favorably cites a North Carolina State Bar 2014 Ethics Opinion that concluded a lawyer may advise a client to remove information on social media if it is not spoliation or otherwise illegal. This appears to be the core of the issue – the lawyer must strike a balance between advising the client to change the information currently posted on the social media site, and advising the client to post false information or to destroy or withhold from discovery the information that was previously on the site.

Supporting this position is New York County Lawyers Association Ethics Opinion 745 (July 2, 2013) which states:

> An attorney may advise clients to keep their social media privacy settings turned on or maximized and may advise clients as to what should or should not be posted on public and/or private pages, … Provided that there is no violation of the rules or substantive law pertaining to the preservation and/or spoliation of evidence, an attorney may offer advice as to what may be kept on 'private' social media pages, and what may be 'taken down' or removed.

The conclusions reached in these opinions make sense. As the Pennsylvania Opinion states: "It has become common practice for lawyers to advise clients to refrain from posting any information relevant to a case on any website, and to refrain from using these websites until the case concludes." ■

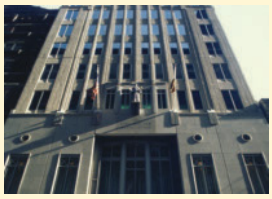
John Levin is the retired Assistant General Counsel of GATX Corporation and a member of the CBA Record Editorial Board.

John Levin's Ethics columns, which are published in each **CBA Record,** are now indexed and available online.

For more, go to http://johnlevin.info/legalethics/.

Worker Better, Smarter with New Member Services

www.chicagobar.org



New CBA Services Add Value to Your Membership!

Check out these new services and savings to help you run your legal practice more efficiently and grow your client base.

New Ways to Save

- Free monthly CLE seminars - attend live or watch live or archived Webcasts, enough hours available to fulfill your MCLE requirements. www.chicagobar.org/freecle
- Affordable meeting space at CBA Headquarters. 312-554-2124
- Free MCLE Credit Tracker - automatically tracks CBA attendance, add your non-CBA credits. www.chicagobar.org/MCLE
- CBA Newsstand - daily email from Lexology aimed at providing valuable and free practical know-how. Learn more at www.chicagobar.org/newsstand
- Up to 40% off new Lexis Advance® Subscriptions. www.lexisnexis.com/barmember40off

Grow Your Practice, Expand Your Career

- New job search/career development resources - free one on one speed counseling, interactive round table seminars, FAQs, search tips and other online articles. www.chicagobar.org/CAP
- Alliance for Women Mentoring Circles. 312-554-2132
- Free breakfast and lunch judicial roundtables - tips and advice directly from the judges themselves. www.chicagobar.org/cle
- Volunteer/pro bono activities - get free legal training and hands on experience for your resume. 312-554-8356

Tools to Run a More Efficient Practice and Give You More Time to Serve Clients

- Solo small firm resource portal. www.chicagobar.org/LPMT
- How To Sessions: free demonstrations of hardware and software geared to legal professionals. Watch past sessions at www.chicagobar.org/howto
- Hands-on Technology Training Center - for members and support staff, covers business and legal software sessions. www.chicagobar.org/techtraining
- Low cost practice management consulting. www.chicagobar.org/LPMT
- Start Your Own Law Firm Bootcamp. www.chicagobar.org/for-CBA-members-only/LPMT
- Practice Basics: Free, fundamentals training for lawyers. Watch past sessions at www.chicagobar.org/practicebasics

Especially for New Lawyers:

Free interactive seminars, career counseling, debt management programming, new lawyer to do list, court walk thoughs, live breakfast series on practice fundamentals, online practice area pointers. 312-554-2131

ETHICS EXTRA

BY NICOLE M. PETRARCA

Free Consultations and the Rules of Professional Conduct

Consumers are always on the hunt for the best deals, discounts, free services and products. Recognizing this fact, lawyers often seek to attract clients by offering "free consultations." What lawyers sometimes forget, however, is that this simple offer constitutes an advertisement and must comply with Illinois Rules 7.1 and 7.2 of Professional Conduct governing communications and advertising.

Attorneys may advertise in a variety of public media outlets, including social media such as Twitter and Facebook, so long as the communications are not false or misleading. Jason B. Lutz, *Attorney Advertising and Disciplinary Action: Some Do's and Don'ts of Advertising*, 25 J. Legal Prof. 183, 183 - 84 (2001); OH Adv. Op. 90-2 (1990), 1990 WL 640494. An attorney's social media post may also constitute a "communication" under the rules of professional conduct. CA Eth. Op. 2012-186 (2012), 2012 WL 6859259 at *2 (holding that the attorney's post statement, "call me for a free consultation," on her Facebook profile page constituted a communication under California's Rule 1-400(A) on Advertising and Solicitation). Illinois Rule of Professional Conduct 7.1 states that "a communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading." Free consultation advertisements that violate Rule 7.1 often contain an assertion or omission that misleads or has the tendency to mislead. *Lutz* at 183 - 84.

To avoid discipline for advertising free consultations, attorneys must: (1) not charge a fee for the consultation, (2) ensure that the free consultation is actually conducted by an attorney, and (3) specify any restrictions on the free consultation in the advertisement itself.

The Consultation Must Be Free

Disciplinary committees have held that charging a client for the time the client reasonably believed was included in the free consultation rendered the advertisement a misleading communication. *Cincinnati Bar Ass'n v. Mezher and Espohl*, 982 N.E.2d 657, 662 (Ohio 2012); *In Re Pacior*, 770 N.E.2d 273, 274 (Ind. 2002) (holding that the attorney's advertisement was misleading and deceptive, in violation of Rule 7.1(b), in promising "free initial consultations" and charging the client for the initial consultation). The Ohio Supreme Court recently disciplined an attorney who advertised "free consultations" but later billed the client for a portion of time during that initial meeting, because the attorney failed to tell the client that the firm began charging when "the client [had] agreed to representation and [had] signed a fee agreement." Dean R. Dietrich, *Charging After A "Free Consultation,"* Wis. Lawyer, March 2013, AT 39.

Nicole Petrarca is a Morrissey Scholar at the John Marshall Law School, with an anticipated JD in January 2015

ETHICS QUESTIONS?

The CBA's Professional Responsibility Committee can help. Submit hypothetical questions to Loretta Wells, CBA Government Affairs Director, by fax 312/554-2054 or e-mail lwells@chicagobar.org.

The Consultation Must Be Conducted By an Attorney

Those who respond to advertisements for a free consultation reasonably expect to have an attorney, not a member of the attorney's staff, provide legal advice or direction. Disciplinary committees have held that providing "information to a person who is filling out a form does not constitute a consultation." *In the Matter of Sekerez*, 458 N.E.2d 229, 238 (Ind. 1984). It is not enough that a secretary meets with the prospective client and collects information or helps the prospective client fill out forms. Furthermore, attorneys have been disciplined for failing to (1) supervise law students to whom they delegated work and (2) retain "complete responsibility for the work product."

Limitations Must Be Clearly Stated

Consider this scenario: A woman sees you are advertising free consultations on your firm's website; however, the advertisement does not disclose any limits on the free consultation. The woman sets up an appointment to discuss her deceased mother's estate and trust. During the first 30 minutes of the appointment you review the will and trust and explain the probate process. The woman then agrees to hire your firm and signs your fee agreement. The woman asks that you get started right away, and you meet for an additional 40 minutes. Weeks later the client calls and asks for her documents back as she no longer wishes to retain your firm. Can you bill the client for your time during that first appointment? The answer is no, as your website advertised free consultations but did not include any limitations. Your

failure to include these limitations would constitute a misleading communication. *Cincinnati Bar Ass'n*, 982 N.E.2d at 660 (finding that the firm's failure to state that "the free consultation ended when the prospective client … hired the firm by signing a fee agreement" was inherently misleading).

Advertisements of free consultations should include all limitations on the consultation. Failure to do so constitutes a misleading communication. Under the Illinois Rule of Professional Conduct 1.5(b), attorneys must communicate "to their client, preferably in writing, the basis or rate of the fee and expenses for which the client will be responsible." Attorneys should clearly communicate at what point the free consultation ends and billing begins. In *People v. Pittam*, 889 P.2d 678, 679 (Colo. 1995), the court held that the attorney's failure to tell the client that there was a time limit on the free consultation constituted a misleading statement. This information should be stated in the advertisement and also be communicated to the client during the actual consultation.

Ads Must Follow Rules

Although promising free consultations can be a good way to get potential clients in the door, attorneys must comply with Illinois Rules of Professional Conduct 7.1 and 7.2 by ensuring that (1) a lawyer conducts the consultation, (2) the client is not charged for any part of the consultation that was advertised as "free," and (3) the client understands and accepts any time or other restrictions on the offer. ■

LPMT BITS & BYTES

BY CATHERINE SANDERS REACH

Five Ways to Strengthen Your iPad's Security

Tablets have taken the legal world by storm. The question of whether a tablet can replace a lawyer's PC depends on the type of tablet involved, the technical proficiency of the attorney, the nature of the legal practice, and the back-office support available. For the past several years, the iPad has been the overwhelming choice for lawyers using tablets in their law practice. However, for most attorneys, the iPad will not suffice for all purposes. With the recent introduction of practical Windows-based tablets or Windows hybrid laptop/tablets, the line between laptop PCs and tablets is blurring. This is especially true for tablets that have a docking station function allowing the use of the computer like any other PC when in the office. In deciding whether to choose between an iPad or a Windows tablet, the relative advantages and disadvantages of both platforms should be considered. The intuitive and easy-to-use iPad has many thousands of applications available, has an attractive interface, and is a mature design. The Windows-based tablets tend to be more complex but benefit from the generally greater capabilities of Windows-based systems required by power users. However, the reality is that most Windows users use only a fraction of the features available in the Microsoft office suite and other similar Windows-based productivity programs. In the end, it comes down to the practice needs of the individual attorney. Some, like your authors, use both PC laptops and the iPad, choosing the device that is most appropriate for the given task at hand.

Catherine Sanders Reach is the Director, Law Practice Management & Technology at the CBA. Visit www.chicagobar.org/lpmt for articles, how-to videos, upcoming training and CLE, services and more.

Ethical Issues

So you love your new iPad and want to use it in your law practice. That likely means you are using it to store and communicate confidential client information. You may also be accessing your firm's internal and cloud based systems. It is also quite possible that unlike your traditional work desktop/laptop, you may be tempted to share this repository of client secrets with your spouse, children or friends–because after all, the iPad is first and foremost a super cool entertainment machine–right? Stop! Look! Listen! If you want to use the iPad as a law practice tool and you value your license, clients and firm, then some basic security precautions are mandated:

Set a strong passcode. In my opinion, it is malpractice to not have the passcode feature activated if confidential client information is on your device. The default 4 digit code feature is inadequate if you are going to use the iPad out of the office (which of course you are). By default (unfortunately), the iPad comes with the Passcode off. Here's how to turn it on and set it: Press Settings, then General. To the right, Passcode Lock should show Off, if you have not already enabled it. Press it; if you have already created a 4-digit passcode, you'll be asked to enter it now. On the Passcode Lock page, you'll see Turn Passcode On. Don't touch that yet. First, go to Simple Passcode and move it to the Off position. If it's turned on, you can only create a simple, wholly inadequate 4-digit passcode.

Once Simple Passcode is turned off, press Turn Passcode On. You'll be presented with a dialog box to enter your Passcode. Set a strong passcode! You can check out the strength of your pass word at this site: *How Secure is My Password?* You can enter any combination of number, letters, symbols–you are not limited in the length of your passcode. You'll be asked to enter it twice, after which your passcode will be turned on. Also, press Require Passcode, and choose the time interval after which your iPad will require a Passcode to get back in. Choose a time period that isn't so often that you are constantly having to enter your Passcode, but is short enough so that if you leave it alone for a short time no one can get into it.

Activate the free "Find My iPad" and "Remote Wipe" features. Apple's find your iPad feature through iCloud enables you to find your iPad (its location will be displayed on a map) if it is lost, send a loud location sound, post a message on the screen, and if need be the ability to remotely wipe all of the data from the device.

Set a time for your iPad to lock up if not used. In "Settings" choose "General" and then select the "Auto-Lock" feature. Pick a time limit. The shorter the better. This feature protects your client data if the iPad is not used for the specified period of time.

0 *Set your iPad to Auto-Wipe after Ten Failed Password Attempts.* Your device can be set to Auto-Wipe all data after 10 failed password

WANT TO LEARN MORE?

The Chicago Bar Association has a wealth of resources on security for lawyer including CLE programs, How To. . . demonstrations and Hands On tutorials. Contact Catherine Sanders Reach at csandersreach@chicagobar.org for a current list.

Excerpted from "Can A Tablet Replace the Attorney's PC?" TECHSHOW 2014 By Catherine Sanders Reach, ABA TECHSHOW Board 2015 and Bill Latham, ABA TECHSHOW 2014 presenter.

This article is but a taste of what awaits you at the ABA TECHSHOW 2015, April 16-18 at the Hilton Chicago. As a member of the Chicago Bar Association, you can get a discount on the ABA TECHSHOW 2015. This discount only applies to registrants that qualify for the Standard registration. You can register online, or download this registration form and include this unique discount code: TECHSHOWEP2015 to receive a discount.

attempts. To access this feature in settings choose "Passcode Lock" and you will be prompted for your Passcode. After entering the Code, turn "Erase Data" on.

Regularly back up your data on iTunes in case your iPad is lost or damaged.

Individually password protect client information if you "must" share Your iPad with others. If you are going to allow your spouse, significant other, children, friends, random strangers or others to "play" with your "work" iPad (bad idea!), then at a minimum secure confidential client information with an Application password. Many applications have their own password feature that will protect data in that application. For example: GoodReader, MobileNoter, and Readdle. Just keep in mind that letting someone use your iPad without protecting your confidential client information is like handing someone a briefcase of client documents so that they can retrieve the magazine among the client papers. Use common sense! Treat your iPad like you would a paper file of highly confidential client documents. Do not leave it unattended in unsecure areas. Keep it locked up when not in use.

If you follow these tips, confidential information on your iPad should be "reasonably" secure. Ignore them and your license may not be. ■

A PERSON OF INTEREST

BY GEOFF BURKHART

Getting to Know…Jack Rives

You're the Executive Director and Chief Operating Officer of the American Bar Association. How is your role different from that of ABA President?

My job is to run the operations of the ABA. I make sure we provide the right support to our members. Our President is in the position for just one year. He or she serves as the face and voice of the ABA. One way to think of it is that I work the "inside" and the President is responsible for the "outside." We consult on a very regular basis.

You spent 33 years in the U.S. Air Force. Why did you leave the military for the ABA?

I spent 33 years on active duty following my commission through the Air Force ROTC [Reserve Officers' Training Corps] program. I entered active duty in January 1977. I had a four-year commitment and no intent to serve longer, but I really enjoyed my service. After 33 years, I was ready for something else. This job opened up in 2009. I wanted something meaningful and challenging, and this position with the ABA is that and more.

Geoff Burkhart is a Project Director at The American Bar Association and a member of the CBA Record Editorial Board.

You were the first Judge Advocate General to hold the rank of lieutenant general. For civilians, what does that mean?

Military lawyers are called judge advocates and are members of the Judge Advocate General's Corps ["JAG"]. The senior JAG is The Judge Advocate General ["TJAG"]. Before 2008, TJAG was a two-star position in the Army, Navy, and Air Force. Congress decided to elevate the stature of the JAG Corps, so they increased the rank to three-stars, or lieutenant general in the Air Force and Army. Because of some delays for my counterparts in the Army and Navy, I was the first TJAG to pin on three stars. Out of some 365,000 people in the Air Force at that time, only about a dozen outranked me after that promotion.

In 2006, you testified in front of the Senate Armed Services Committee, urging greater human and legal rights for terror suspects. Why is it important to extend legal protections to detainees?

In my view, we had a duty to respect the United States Constitution and our treaty obligations. I also thought it wise to abide by the Golden Rule—for this Nation to treat those held in a captive status as we expect our servicemembers who may be held by others to be treated. Those standards are not lessened when the military holds unlawful combatants.

What parts of your military experience have been most useful in your current role?

For more than 40 years, our military has been an all-volunteer force. The skills I learned in the military transferred easily to this job. In the military, I learned to manage things and to lead people. I worked with people, explaining what I needed and why I may need it in a certain manner. And that's the way I work with the ABA staff and our members.

Are there any military skills that didn't translate well to civilian work?

Not really. The management and leadership techniques apply well in both contexts. But of course, some things are different in the military. It's critical to have a highly disciplined force, and military orders need to be enforced. For example, in the private sector, an employee can choose not to come to work, just "because." But a military member who fails to show up without a legitimate justification can expect a disciplinary response.

You helped develop three guiding principles for the U.S. Air Force JAG Corps: Wisdom, Valor, and Justice. What are the ABA's guiding principles?

I believed that every member of the JAG Corps should know what we stand for, so we developed those guiding principles. Similarly, the ABA has four goals: (1) Serve Our Members; (2) Improve Our

A PERSON OF INTEREST

"A Person of Interest" is the **CBA Record's** new column profiling someone we think you will enjoy getting to know. If you have an idea for someone we should feature, we'd love to hear from you! Send an email to publications@chicagobar.org.

Profession; (3) Eliminate Bias and Enhance Diversity; and (4) Advance the Rule of Law. Everything we do at the ABA can and should relate to our goals.

Have you had a chance to engage with the Chicago legal community? Do you have any impressions of the attorneys here?

Yes, and I am very impressed. First of all, the City of Chicago is magnificent. It's a beautiful city, with a lot to do, and the people are friendly. I've gotten to know many local attorneys, and they represent the best of our profession. Our ABA staff includes about 180 attorneys, and they have a real passion for their work.

During your commencement address at your alma mater, the University of Georgia School of Law, earlier this year, you told the graduates to "always treat everyone with dignity and respect" and noted that General Colin Powell, the Chairman of the Joint Chiefs of Staff, knew the names and backgrounds of security guards at the Pentagon. The ABA is headquartered at 321 N. Clark. Do you know the security guards there?

I do, actually. I chat with [them] at the Clark Street entrance when I come in to work most days. I'm appreciative of the work people do for us, from security guards to our cleaning crew. I tell the ABA staff that I have three expectations of them: (1) to do their best; (2) to do what's right; and (3) to treat everyone with dignity and respect, always.

You worked with General Powell. Can you give us an example of how he treated people?

One day, I had been in a meeting with General Powell in "the Tank," a highly secure facility where some classified matters were discussed. I was walking back to his office with General Powell. We approached an Army major who had a Joint Staff badge and he was with what appeared to be his parents and grandmother. Rather than walk by, General Powell stopped, shook their hands, and thanked them for their son's service. I could tell that was a moment they would always remember. It was a nice gesture, the type of thing leaders should do to show appreciation for the work of their staff.

You also told the graduates that "there are no degrees of honesty." What do you mean by that?

It's funny, I got that message one day in a fortune cookie. I was hoping for a joke or some cute saying from Confucius. But I thought about that message, and it's true: You're either honest or you're not. You have integrity or you don't. To say that someone is "honest most of the time" is not a compliment. Attorneys are officers of the court; we must have integrity; we must be honest all of the time. There are no degrees of honesty.

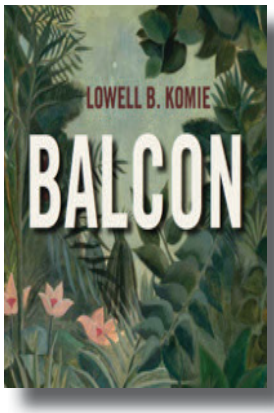
I grew up in Kentucky. You grew up in Georgia. I'm not used to the winters here yet. Are you?

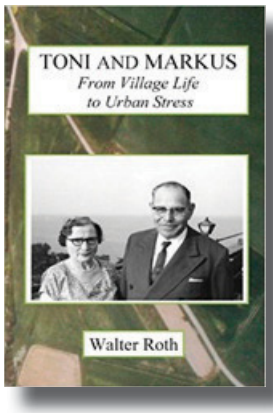
I am! Although I'm from the South, I had several military assignments in cold places. My first assignment was in Upstate New York in January. My first week, the wind chill dropped to 70 degrees below zero every night! And it didn't get above freezing for the first month I was there. So, yes, yesterday was chilly in Chicago [12 degrees], but I'm pretty adaptable. ■

SUMMARY JUDGMENTS

REVIEWS, REVIEWS, REVIEWS!

Two Chicago Favorites Deliver Winners





Balcon
By Lowell B. Komie
Swordfish Chicago, 2013

Toni and Markus, From Village Life to Urban Streets
By Walter Roth
Walter Roth, 2014

Reviewed by Bonnie McGrath

Both of these books arrived at my door at the same time. Both are written by long-time Chicago lawyers, who have made writing an avocation, a sideline if you will, throughout their distinguished legal careers. I have reviewed their books (and enjoyed them very much) in the **CBA Record** through the years. And while the themes and topics and styles of their books may have been somewhat different as they pursued their writing, something binds them together. So, it makes sense for me to review these two books together. I think if you like either of these authors and the books they've written in the past, you will more than appreciate them now.

Walter Roth has done a remarkable thing in his latest tome about his father and stepmother, Toni and Markus. They were Jews and lucky to have left Germany when they did. Still, it was hard. Not joyous. Settling in Chicago with a blended family–Roth was a young boy–detached from their village life and thrust into a Midwest urban milieu of the late 1930's, it is quite correct to say they were never the same afterwards. Almost all of this story is told in transcripts of conversations between Roth and his stepmother, captured for all time–before she passed away at the age of 99.

He asks her interesting questions about feelings. And he gets answers that include things she felt about his family when he was a little boy, what it was like marrying her late cousin's husband, raising her three children (one of whom developed severe emotional problems), leaving Germany for America, missing Germany, worrying about everything and giving birth to a child of her own only six months after arriving. What was it like to leave everything she knew, and ultimately watch a remarkable, outgoing and hardworking new husband descend into profound sadness and despair as he transitioned into a new life in Chicago, paints a fascinating and realistic portrait of immigrants at that time.

The book tells us as much about Chicago after they arrived in 1938 as it does about the intimate details of their family life. Roth's questioning of his stepmother is painstaking and thorough. There are things he wants to know, details he wants to learn in talking to his stepmother that he never knew before. And the reader winds up with an eye-opening peek into the domestic life of a refugee family in our city during very tough–but very loving–years.

Komie's book is a novel. The story, told in the first-person, centers around a single, 66-year-old retired Chicago lawyer whose large firm has gone bust. He now lives in a Miami Beach condo that he inherited from a cousin who was a star jai alai player. Alexander Rincon Pollack has little money, no close friends and lots of time on his hands to explore, make new friends and, yes, get into some mischief.

Pollack is a man still trying to find himself. He tries out different women as though he is shopping for a new coffee table–all of whom in one way or another are inappropriate–but worthwhile knowing for one reason or another. He pursues some reading, some music, a bit of gambling, speed dating, a bit of lecturing to a local book club–and he frequents different restaurants, stores and other sites in his neighborhood. He also has an imaginary friendship with Isaac Bashevis Singer.

Yes, Pollack has time on his hands.

As usual, Komie displays his great writing strength. Aside from the gift of storytelling, he has a knack for describing simple, yet profound details of everyday life, the kinds of details that tell a rich and satisfying story that grabs you and won't let you go. I wondered throughout the book about where Pollack was going exactly and about where Pollack would end up. I must say I was quite surprised when I found out where he did end up, but the journey to that end makes this novel one of Komie's finest reads. Getting to know Pollack was interesting, delightful and quite fun. ■

Bonnie McGrath is a sole practitioner and a member of the CBA Record Editorial Board.

Wine Tasting

With music by Chicago Bar Association Symphony Orchestra and Chorus Ensembles…and Comestibles

To benefit the CBA Symphony Orchestra & Chorus

Friday, February 27, 5:30–7:30 p.m., CBA Headquarters, 321 South Plymouth Court

Admission: $45, limited to 200 guests

Grand Prize Drawing with purchase of advance tickets to"Something Wonderful," a Rodgers & Hammerstein spectacular at Orchestra Hall, April 26

Tickets: Call Tamra Drees 312/554-2057 or email tdrees@chicagobar.org

Office Services Showcase

For more information on how you can advertise your product or service, contact the **CBA Record's** Advertising Coordinator, Joseph Tarin, at 312/554-2040 or jtarin@chicagobar.org.

Even successful businesses should be prepared for the worst

Planning now can help you protect your future

Security. It's not always easy to find, but with The Chicago Bar Association, it could be right at your fingertips. The CBA sponsors a variety of Insurance Plans for you and your family…at very competitive prices.

- Comprehensive Major Medical (Group and Individual)
- Group Term Life
- Lawyers' Professional Liability
- Short-Term Medical
- Long-Term Care
- Disability Income Protection
- Dental Coverage

Before you're caught without protection, call CBA Administrators today at 312.554.2075 for more information.

CBA Administrators, Inc.
321 S. Plymouth Court
Chicago, IL 60604
Tel: 312.554.2075
Fax: 312.554.0312