

JANUARY 2017

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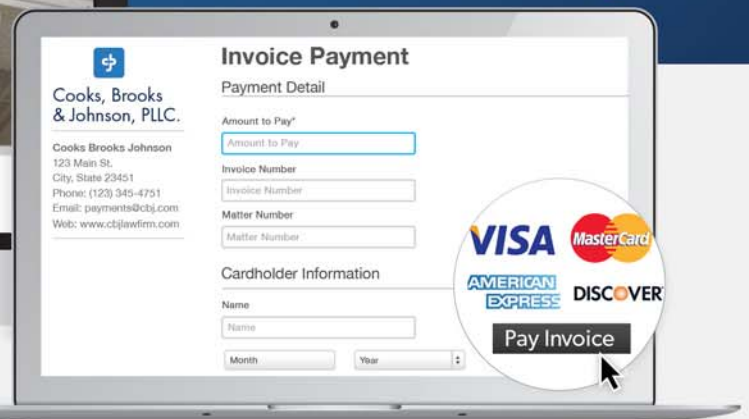
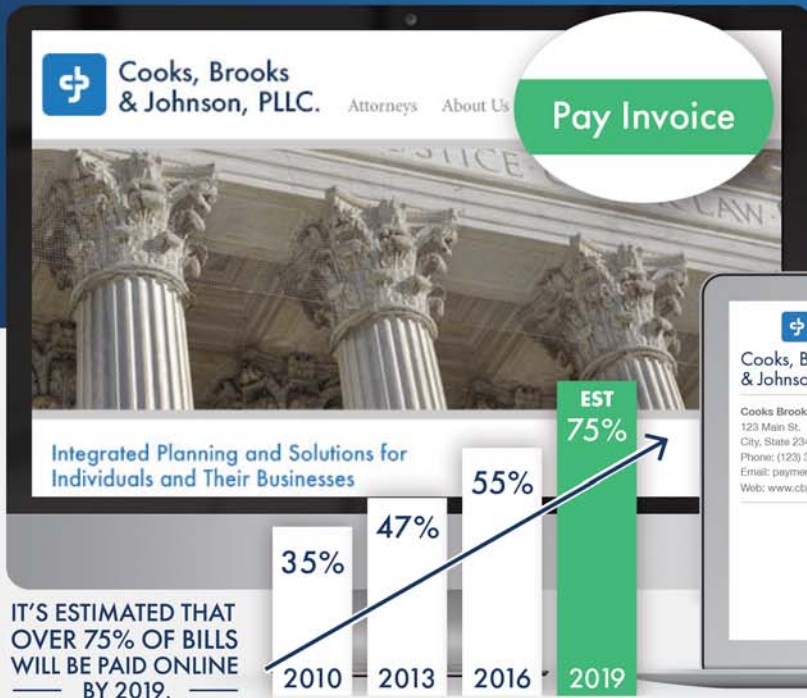
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# CBA RECORD

## 6 Editor's Briefcase

A Higher Purpose

## 8 President's Page

CBA Leadership Institute:  
One Year Later, One Year  
Better

## 10 CBA News

## 18 Chicago Bar Foundation Report

## 20 Murphy's Law

## 44 Legal Ethics

Illinois to Consider New  
ABA Model Rule  
By John Levin

## 46 LPMT Bits & Bytes

ABA Tech Show  
By Jim Calloway and  
Ernie Swenson

## 48 Nota Bene

The Power of Pronouns  
By Kathleen Dillon Narko

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# CONTENTS

January 2017 • Volume 31, Number 1

## INSIDE THIS ISSUE

### 26 The Problem of the Inside Job

By Anthony F. Fata and Corey M. Martens

### 32 The Community Restorative Justice Court

By Judge Sophia H. Hall

## YOUNG LAWYERS SECTION

### 36 Human Trafficking Awareness Month

By Kathryn Carso Liss

### 38 How Can You Serve Those who Served? Not Just JAG

By Edward M. Farmer



### On the Cover

This issue of the **CBA Record** features the photograph *Markham*—a deer who, in past years, frequented the Cook County Courthouse in Markham—from retired Cook County Judge Joan Kubalanza.

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# EDITOR'S BRIEF CASE

BY JUSTICE MICHAEL B. HYMAN, EDITOR-IN-CHIEF

## A Higher Purpose

Many of us entered the legal profession with a strong awareness of a higher purpose. For some, that purpose has varied depending on personal experiences, encounters, expectations, and emotions. Others have slowly become unconscious of the higher purpose to which they once aspired. For a few, though, the purpose has stayed constant, vital, and a life-long quest.

I believe following a higher purpose gives our work a focus, a hook, an essence, that transcends self and personal gain and makes the law seem less like a job and more like a calling.

Without a higher purpose we just drift, rudderless and susceptible to any wind.

Without a higher purpose, we more easily become discouraged or disheartened because we have little drawing us to something that is so worthwhile it makes us proud of what we do.

Without a higher purpose, we tend to ignore or forget what we value, and what we stand for.

The actor and activist Ossie Davis beautifully described the power of a higher purpose when he wrote:

“We can't float through life. We can't be incidental or accidental. We must fix our horizon, and once we have attached ourselves to that star we must keep our eyes on it and our hands on the plow. It is the consistency of the pursuit of the highest possible vision that you can find in front of you that gives you the constancy, that gives you the encouragement, that gives you the way to understand where you are and why it's important for you to do what you can do.”

Pursuing a higher purpose makes engaging in law more satisfying and more rewarding, as long as that purpose meets two characteristics: it must be unselfish, and it must be meaningful.

“Unselfish” refers to caring more for the interests and needs of our clients than financial remuneration. To be “meaningful,” the purpose must have the potential to positively impact the world and make it a more just, hospitable place. When work is meaningful, it usually leads to greater enjoyment, which in turn brings about a greater sense of fulfillment in our lives.

A higher purpose can be as challenging as easing the heartache that accompanies life's tragedies, or as practical as committing to advocate with decency and civility. A higher purpose can be as basic as bringing to account in a responsible manner individuals who violate society's rules, or as crucial as protecting and vindicating the rights and interests of those same individuals. Or, a purpose can be as necessary as advancing the causes of people whose voices are not heard and whose interests are not represented.

Practicing law is demanding. We spend more of our time at it than any other single activity. A lot of stress and anxiety and fatigue go into lawyering. A higher purpose will not magically relieve these feelings. But studies show that employees who are oriented to a higher purpose perform better and are happier in their jobs. Apparently, a higher purpose helps keep things in perspective, and provides the strength to press on.

A higher purpose also gives our work utility beyond the immediate, and infuses our lives with significance beyond the mere product of our labors. In this way, we are less likely to lose track of why we practice law.

What is your higher purpose? ■

*Rehearing:* “The goal is the main thing. There can be no wisdom in the choice of a path unless we know where it will lead.”—Justice Benjamin N. Cardozo

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# PRESIDENT'S PAGE

BY DANIEL M. KOTIN

## CBA Leadership Institute: One Year Later, One Year Better



I have spoken about this many times: The paradigm of American law is changing. For example, technology has eliminated the need for centrally located Loop law offices with libraries. Younger lawyers have a fresh (and perhaps healthier) perspective on the importance of a work/life balance. In light of these and many other changes, bar associations must likewise change or risk becoming antiquated and irrelevant organizations.

With that concern in mind, The Chicago Bar Association is always analyzing and adapting our formats and programming to provide useful and important services for what our members need today. On that note, we set out a few years ago to find out what services we could provide to remain relevant and useful to young lawyers at large and mid-size law firms. We had meetings with several senior partners at Chicago's top firms and asked them what skills their young associates need most. The answer, almost universally, was that young associates need to learn leadership and business development skills more than anything else. Apparently, these young lawyers are

working so hard on existing client matters that they have little opportunity to learn the skills necessary to become the firm leaders and business generators of the future.

And so, The Chicago Bar Association Leadership Institute was born. The goal was to enroll a small class of emerging and ambitious young associates in a year-long program and help them to develop the personal qualities and professional skills necessary to become future leaders in the legal profession and in our community. A special leadership planning committee was created, chaired by Clark Hill managing partner Ray Koenig, III, and the Institute's curriculum was developed based upon information gleaned from focus groups as well as extensive research into leadership and business development programs in other fields around the country.

The Institute's 2016 Inaugural Class included 20 young lawyers from Chicago's top law firms. The class met monthly throughout the year, and I am happy to report that every student felt the program exceeded their expectations.

The program's graduation ceremony was held on November 30<sup>th</sup>, at which time I had the opportunity to congratulate the students and present them with graduation certificates demonstrating their successful completion of the CBA Leadership Institute. What was most remarkable to me was the fact that at this time in our society when we are learning of the ever decreasing attention span of the "millennial" generation, and when young lawyers' involvement in bar associations generally is waning, almost every member of the Class of '16 offered the same evaluation of the Institute—they wanted more! They wanted more substantive instruction; more opportunity to practice the skills they were learning; and more



time to interact with other members of their Institute class. Perhaps most encouraging was the universal interest of this class in staying involved in the program as Leadership Institute Alumni. They expressed a willingness to invest the time and energy needed to help expand and improve the program for future incoming classes.

So, with one very successful year now in the books, we are ready to launch the 2017 Leadership Institute with a fresh crop of young associates carefully selected by our Leadership committee. We took the suggestion of last year's class to heart when developing this year's curriculum, which includes the following nine substantive sessions:

- The basic skills of effective leadership
- What kind of leader are you?
- Essential time management skills
- How to effectively lead a team
- Advanced public speaking and presentation skills
- Having difficult conversations
- Overcoming unconscious bias
- Advanced business development skills—

#### Part I

- Advanced business development skills—  
Part II

At the urging of last year's class, we have now incorporated eight "cohort" sessions which will allow students to further discuss what they have learned during these substantive sessions as well as to network with one another. Once again, our faculty will include leading lawyers and executives from the corporate, business, government and private sectors. Participants will receive substantial CLE credit, dinner at every evening session, and complimentary tickets to many premier CBA events throughout the year.

I was very happy to see that most of the firms who sponsored participants in the 2016 Class nominated a second associate for the 2017 class. As the class size must remain small in order to provide the true benefits of the program, there will necessarily be more applicants than positions available. Nevertheless, any young lawyer who is not accepted in this year's program should certainly reapply for next year's class.

I am confident that as the Leadership Institute continues to thrive and its growing alumni class begins to take leadership positions in Chicago's law firms, this initiative will be yet another example of The Chicago Bar Association developing and instituting a model program for other state and metropolitan bar associations around the country to follow.

If you are interested in nominating an associate for a future class, or to simply learn more about the Institute and see the full curriculum, visit [www.chicagobar.org/leadership](http://www.chicagobar.org/leadership).

I am very proud to have been part of the CBA Executive Committee for the germination, initiation, and now the growth of the CBA Leadership Institute into what promises to be a long-standing and respected cornerstone of our organization. With programs like this one, The Chicago Bar Association will remain relevant, vibrant and an integral part of our Chicago legal community. ■



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# CBA NEWS

## 50-YEAR MEMBER LUNCHEON

# Celebrating the Class of 1966

By Daniel A. Cotter, Editorial Board Member

In 1966 (the year I was born), the President of the United States was Lyndon B. Johnson, his Vice President was Hubert Humphrey, and the United States population was just under 200 million. The average cost of a new home was \$23,300, a gallon of gas cost \$.32, and a dozen eggs cost \$.60. Medicare went into effect and the National Organization for Women was founded. That same year, 103 men and 3 women joined The Chicago Bar Association and renewed their memberships over the next 50 years. The CBA recently held a luncheon to honor the 50-year-milestone of this amazing class, the largest 50<sup>th</sup> anniversary class that the CBA has seen to date.

After welcoming comments from CBA President Dan Kotin, and a preview of the 2016 Bar Show by several cast members, who sang the show favorites “I Remember It Well” and “The Junior Partner,” attendees heard from three of the members of the Class of 1966: David Hilliard, Thomas Z. Hayward, Jr., and Kevin Forde. All three are past presidents of the Association (Forde 1982-83, Hilliard 1983-84, and Hayward 1984-85). Forde spoke first and talked about some of the Association’s accomplishments during his term, including increasing the salary of federal judges (he argued the case before the Supreme Court of the United States), fighting a service tax on professional services proposed by the City Council, and starting the Lawyers Trust Fund. Forde closed his remarks stating that “It has been my pleasure to be working in the

vineyard with all of you throughout the last 50 years.” Hilliard spoke next, noting that a large number of the Class of 1966 were military veterans and highlighting the creation of the Young Lawyers Section of the CBA, which celebrates its 45<sup>th</sup> anniversary this year. Hayward concluded the presentations, noting that the biggest benefit of bar membership was interacting on a regular basis with so many lawyers, including those in the 50<sup>th</sup> anniversary class. Hayward addressed his founding of the YLS with Hilliard and others and also remarked on the CBA’s efforts to reform the evaluation of judicial candidates. Hayward also discussed his participation on the search committee that selected Terry Murphy to be the Association’s Executive Director. Hayward closed by observing that the profession is changing, and that he “is glad the sun is setting on mine.”

The 2016 50<sup>th</sup> anniversary class includes many of the leaders of our legal community over the last half century. Some other notables besides the three keynote speakers are:

- David Bryant—worked to establish a computerized legal research service that later became Lexis;
- Ronald Cope—Partner at Nixon Peabody, assisted in drafting of the Bill of Rights provisions of the Illinois Constitution;
- Robert Downs—ISBA Past President
- Roger Fross—Partner at Locke, Lord and first managing partner of Lord, Bissell & Brook. Successfully argued *Shakman v. Democratic Party et al*;

- Edward Genson—eminent criminal defense attorney;
- David Maher—participated in formation of Internet Corporation for Assigned Names and Numbers;
- Alan Rauh Orschel—represented, among others, Barney, the Purple Dinosaur;
- Hugh Schwartzberg—worked to defeat the nomination of Clement Haynsworth to the Supreme Court;
- Donald Segal—co-founder of Segal McCambridge Singer & Mahoney Ltd; and,
- Earl Talbot—Co-founder of Hoogenboom & Talbot LLP.

The Chicago Bar Association congratulates this latest 50-year anniversary class on reaching this amazing milestone and pays honor to their contributions to the law and their personal achievements over the last five decades. Members of the CBA such as those in this class have made the Chicago legal community one of the strongest in the nation, and we thank them for setting a fine example of what belonging to the CBA and contributing to the legal community. ■



Attendees at the CBA's 50 Year Member Luncheon on October 28, 2016. Photo by Bill Richert.

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### A Judiciary and Bar in Peril

Judge Martha A. Mill's article *The Nation of Turkey: a Judiciary and Bar in Grave Peril* (November **CBA Record**, p. 28) presents a clear-eyed rendition of the fragility of institutions we take for granted. As if to flesh out Judge Mills' article, a December 10th *Wall Street Journal* article entitled "Turkey's Autocratic Turn" pointed out that Turkey's president, Erdogan, wants the constitution changed so he can stay in power until 2029. The article ends on the gloomy quote by Osman Can, former constitutional court justice: "the institutions have failed," he said.

Gerry DeNotto  
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## CBA'S LEADERSHIP INSTITUTE ENTERS SECOND YEAR



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**—Ray J. Koenig III, Leadership Institute Chair, Clark Hill PLC**

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# Introducing Girl Scouts to the Field of Law



It's that time of year again when the CBA's Alliance for Women and the Girl Scouts of Greater Chicago and Northwest Indiana are gearing up for the seventh Project Law Track Program, which will be held from March 2-18. The program consists of a series of three dynamic interactive evening sessions designed to introduce Girl Scouts to the field of law that will culminate in a half-day mock trial on March 18 in the Federal Courthouse in downtown Chicago.

The program introduces girls to the many different opportunities that a legal career can offer, demystifying the portrayal of lawyers as seen on television and in the movies, and providing girls with the experience of stepping into the shoes of a trial attorney to prepare a case for a mock trial and try it before a real judge in a Federal courtroom. Since the very first

*If you are interested in volunteering, please contact Erica Byrd, Garfield & Merel, at 312/288-0104 or via email at [byrd@garfield-merel.com](mailto:byrd@garfield-merel.com). We will work with you to partner you with a participant as soon as they have been determined in early 2017. And we promise you it will be a rewarding experience! Thank you in advance for your consideration.*

*The dates and sessions for the 2017 Girl Scouts Project Law Track Program are:*

- Session 1:** Law (As Seen on TV): Thursday March 2, 5:30-7:30 pm, Skadden Arps, 155 N Wacker Dr., Suite 2700
- Session 2:** Law School/Career Day: Thursday, March 9, 5:30-7:30 pm, Chicago-Kent School of Law, 565 W. Adams Street
- Session 3:** Prepare Your Case! Thursday, March 16, 5:30-7:30 pm, Seyfarth Shaw, 131 S. Dearborn Street, 24th Floor,
- Session 4:** Try Your Case! Saturday, March 18, 9:00 am-2:00 pm, Everett M. Dirksen U.S. Courthouse, 219 S. Dearborn Street

Project Law Track in 2011, Judge Rebecca R. Pallmeyer, United States District Court for the Northern District of Chicago, has graciously allowed the mock trial to take place in her courtroom. To participate in Project Law Track, girls 6<sup>th</sup> grade and older are required to complete an application, for which approximately thirty-five girls are chosen on a first come, first served basis. The girls must also sign a written commitment pledging to dedicate the necessary time to the program.

To fulfill the goals of the program, Project Law Track is looking for female attorneys who would be interested in serving as mentors throughout the three week program. We would like to partner each participant with a female attorney who will work with her during the program, with particular emphasis on helping her prepare for her role in the mock trial, which is the capstone of the program. Ideally, each female attorney volunteer would attend all four sessions of Project Law Track but at a minimum must be able to attend the mock trial prep session on Thursday evening, March 16, 2017, and be in attendance to

support her mentee at the mock trial on Saturday, March 18, 2017.

Attorneys who volunteer have an opportunity to meet and work with other talented attorneys from diverse backgrounds and interests connected by the shared desire to give of their time, advice, knowledge, and insights to girls who may be planning a career as an attorney or who are just curious about the field of law. In turn, the girls will broaden their understanding of what it means to be an attorney, experience the possibilities that are available to them by working side-by-side with female role models, interact with their peers and attorneys in preparing for a mock trial, and learn that there are women who care and want to help them explore their future career options. ■



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## Free MCLE Credit Tracker

As a CBA member benefit, our MCLE Credit Tracker automatically compiles credits earned at accredited seminars and committee meetings produced by the CBA and the CBA Young Lawyers Section. Special features include: CBA certificates—print certificates for CBA seminars and committee meetings; Credit Summary and Reports—View all credits currently stored in the system for your account; and Non-CBA MCLE—Input credits earned at non-CBA sponsored programs.

Credits earned at CBA committee meetings and seminars are automatically

entered into the MCLE Credit Tracker. Credits for attendance at CBA committee meetings are generally posted within two weeks of the meeting. Credits for attendance at seminars are posted by the 15th day of the following month (For example: credits earned at a March 3rd seminar will be posted by April 15th). The MCLE Credit Tracker is located at [www.chicagobar.org](http://www.chicagobar.org), under the CLE tab. If you need assistance regarding your CBA MCLE credits, please email [cle@chicagobar.org](mailto:cle@chicagobar.org). For general information on MCLE requirements and rules, please visit the MCLE board website at [www.mcleboard.org](http://www.mcleboard.org). ■

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## Don't Let Your Membership Lapse!

If you have not yet renewed your CBA membership, please take a moment to do so before 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](http://www.chicagobar.org)).

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**The Changing Landscape of Adoption Practice**  
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**Diversity in the Legal Profession: Cultural/Gender Differences**  
February 2 • 12:00-2:10 p.m.

**Planning Your Financial Future**  
February 2 • 3:30-5:00 p.m. (complimentary)

**Alternative Sentencing and the Criminal Justice System**  
February 3 • 12:00-2:10 p.m.

**Beer, Wine, Spirits and the Law**  
February 7 • 5:00-7:00 p.m.

**Avert Disaster! Business Continuity Planning for Law Firms**  
February 8 • 12:00-1:30 p.m.

**Taxation Crossovers: Tax Issues in Other Areas of the Law**  
February 8 • 3:00-6:00 p.m.

**How To... Practice Management Software**  
February 14 • 1:45-2:45 p.m. (complimentary)

**Should Civil Asset Forfeiture be Reformed?**  
February 16 • 12:00-2:10 p.m.

**2016 Labor & Employment Year in Review**  
February 21 • 3:00-6:00 p.m.

**From Flint to Chicago: The Law of Drinking Water Quality**  
February 22 • 3:00-6:00 p.m.

**Jury Selection**  
February 22 • 4:00-6:30 p.m. • Daley Center

**Non-Traditional Careers for Lawyers Webinar**  
February 23 • 12:00-1:00 p.m. (complimentary)

**Hiring the Right People for the Right Job**  
February 23 • 12:00-1:15 p.m.

**How To... Common Website Pitfalls/Disciplinary Issues**  
February 28 • 1:45-2:45 p.m. (complimentary)

**Class Action in a Trump Administration**  
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Programs are held at the CBA Building, 321 S. Plymouth Ct., Chicago,  
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# Chicago Bar Foundation Report



## A New Year's Resolution for the Legal Profession Stop Calling People Non-Lawyers!

By Bob Glaves, CBF Executive Director

Every once in a while I read an article or hear a speech that causes me to recognize I've been acting like a fool in one way or another. And I am certain I have many more opportunities ahead of me for that kind of recognition. A great example of this phenomenon occurred not long ago when I heard Jordan Furlong, a very perceptive analyst of the legal market and the future of our profession, note that we are the only profession that describes everyone who is not one of us as a "non."

He's right. You don't hear doctors calling everyone else in the medical field "non-doctors," or CPAs calling their colleagues "non-CPAs." In fact, it sounds absurd to even imagine them or any other professionals doing that. Yet that's exactly what we do as lawyers, and I have certainly been guilty of my share of it over the years.

While I have no idea how we got started using the non-lawyer expression, and I don't think it is something lawyers do with any ill will, it is pretty offensive when you think about it. And it betrays a shortsighted and artificially limiting mindset that has a number of negative consequences for access

to justice, the future of our profession, and our public image as lawyers.

### The Many Integral Legal Professionals Besides Lawyers

There are so many different professionals who contribute to a successful law practice today that I am sure I would forget some if I tried to name them all. In a larger law firm you increasingly will find a team of management, finance and administrative professionals; professionals dedicated to marketing and communications, technology, pricing, project management, analytics, and more; paralegals and other people dedicated to legal and operational support; and many outside consultants. Sometimes the people in these roles also happen to be lawyers, but it is generally more of a coincidence when that is the case; the kinds of experience and expertise these other professionals bring to the table is very different from what lawyers bring.

In smaller firms and other practice environments, these various kinds of expertise are more likely to come from consultants or contractors or through bar associations or professional networks, but they are no less important to a successful practice in the modern era. And if anything, this will be even more true in practices of all sizes in the future as technology continues to transform the practice of law.

Obviously, the delivery of quality legal

services is the ultimate output for a law practice, and lawyers remain the core of providing those services. But acknowledging that reality is no excuse for minimizing these professionals by defining them as a "non" or laying down such a bright line divide between lawyers and the many other professionals who are integral to delivering the lawyers' legal services effectively, and who increasingly provide value to clients in other ways as well.

That bright line divide is more than a matter of nomenclature, as right now in Illinois and almost everywhere else in the country we continue to cling to ethics rules that say only lawyers can own law firms and it is unethical for lawyers to share profits with anyone who is not a lawyer. As we work to wean ourselves off our unfortunate "non-lawyer" terminology habit, we should take a hard look in the mirror at why other legal professionals and outside investors can't share in the ownership of law practices. England, Australia and other jurisdictions have already opened the door to other kinds of ownership, and it is time to have a more serious conversation about that here as well.

### The Critical Roles of Other Legal Professionals for Access to Justice

While I'll save the law practice ownership/investment discussion and its potential impact on access to justice for another

*Note: This article is from a "Bobservations" blog series on the CBF website. You can see the full series at [chicagobarfoundation.org/bobservations](http://chicagobarfoundation.org/bobservations).*

day soon, other legal professionals can and increasingly do play a key role in access to justice in a number of ways. I want to focus on two important contributions in this article.

### Pro Bono

The first is on the pro bono front. Organizations dedicated to serving low and moderate income people in our community have most of the same challenges and opportunities as firms serving the business community. The same kinds of professional experience and expertise that contribute to the success of a law firm or corporate law department are sometimes even more valuable for nonprofit legal organizations serving our community. There already are a number of great examples of legal professionals providing their pro bono services to advance the work of legal aid and access to justice efforts here, and there is incredible potential for them to have even greater impact going forward.

### Court-based Assistance

Another role with a lot of potential for legal professionals and other volunteers involves providing direct assistance to unrepresented litigants in the courts. Our system is daunting and complicated for someone not trained in the law, and it can become even more frightening when that person is involved in a stressful legal matter. Many of the questions and concerns people have when they enter the system are not about the legal issue itself, but are more about the process they are going through. Where do I need to go? What forms do I need to file? What happens next? These kinds of issues not only don't require the assistance of a lawyer, sometimes there are other people better situated to provide that help.

For example, the Illinois JusticeCorps program, like its California counterpart, continues to show real value for access to justice by utilizing college students and recent graduates to provide procedural and other neutral assistance in the courts. Illinois JusticeCorps recruits, trains and provides the necessary support for these AmeriCorps volunteers who serve as guides to make courts across Illinois more welcoming and less intimidating for people

without lawyers.

Another example comes from New York. A recent study from the American Bar Foundation and National Center on State Courts found that unrepresented tenants facing eviction in New York City were able to get significantly better results when they received the assistance of trained "court navigators" who are not lawyers when compared to tenants who had no assistance with their case.

These are just two examples that underscore there are many roles in ensuring access to justice in the courts that go beyond lawyers providing assistance or representation. While we do need to be wary of the "warm water in the desert" phenomenon as we look at expanding these programs (i.e., just because someone fares better with a navigator than on their own does not mean they would not have been far better off with representation from a lawyer), there is no question that ensuring the court system is fair and accessible for all will involve many professionals and volunteers, not just lawyers.

### A New Start

For all of these reasons, our profession should start 2017 by recognizing the error of our ways and dispatching with the term "non-lawyer" once and for all. Instead, let's start calling everyone else we work with by who they are, not who they are not. The interrelated quests for equal access to justice and a healthy and prosperous future for our legal profession will require a concerted team effort to succeed. And we'll all be better off by recognizing that we all have important roles to play on that team, not just us lawyers. ■

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## Resources for New Lawyers

Just getting starting in the practice of law in Chicago? The CBA offers many resources and programs to help new lawyers. Go to [www.chicagobar.org](http://www.chicagobar.org), YLS, New Lawyer Resources to see our comprehensive list and links including MCLE requirements, new admittee to do list, career services, mentoring programs, seminars for new lawyers, practice pointer videos, solo start up boot camp and more.

## Save Money on CBA Member Discount Programs

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# MURPHY'S LAW

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR



Former Chicago Public Library Director Mary Dempsey, CBA President Daniel M. Kotin, Jean Kotin, Peg Corboy, and Philip Harnett Corboy Jr. were all on-hand at the CBA's President's Party on Friday, December 2 at CBA Headquarters. Photo by Bill Richert.

**N**ow is the best time to register for the Association's April 10-13 International Continuing Legal Education program in London, featuring presentations on comparative law, diversity and inclusion, cyber security and access to justice. In addition to the CLE programming, which is being hosted at LexisNexis' global headquarters, we have planned a series of outstanding tours of the U.K. Supreme Court and the Royal Courts of Justice. Members will have an opportunity to view a trial at the Old Bailey Courthouse in the "well" (courtroom floor), and can take a river cruise of Runnymede featuring a presentation from the Reverend Dr. **Robin Griffith-Jones**, Master of the Temple, Temple Church. Jones is a renowned Magna Carta scholar and a delightfully interesting speaker. The Runnymede cruise will be followed by a tour of Windsor Castle (both are optional events). Planned social events include: an opening reception at a London-based law firm, dinner at London's oldest pub,

"Ye Olde Cheshire Cheese," and chamber music in the Historic 12<sup>th</sup> Century Inner Temple Church, featuring members of the CBA's Symphony Orchestra. The Temple Church was featured in the movie "The DaVinci Code." The closing dinner will be held in the Inner Temple's Grand Hall and will feature remarks from the Honorable **Lord Neuberger**, President of the U.K.'s Supreme Court.

We have secured a group rate at the Athenaeum Hotel & Residences, 116 Piccadilly, in Mayfair, London. The Athenaeum is a five-star hotel located directly across the street from Green Park, which is a short walk to the gates of Buckingham Palace. It is also a short walk to Bond Street, featuring some of the world's best shopping. This is a unique trip and one that you won't want to miss. For more information, contact **Tamra Drees** at 312/554-2057 or [tdrees@chicagobar.org](mailto:tdrees@chicagobar.org).

## CBA Nominating Committee

The 2017 Nominating Committee is in

formation. Pursuant to Section 8.3 of the Association's Bylaws, the committee will be selected by the end of January. The Bylaws provide for a Nominating Committee consisting of 17 members selected as follows: five committee chairs are randomly drawn from the CBA's 93 committees by the Association's secretary; three members of the Young Lawyers Section, one of whom is the immediate chair of the Section; four members are selected by the Past Presidents Committee, two of whom are past presidents and two at-large members; and four at-large members selected by the Board of Managers. Under the Bylaws, the immediate past president one year removed from the board becomes the Chair of the Nominating Committee. This year, Dan Cotter will serve as Chair of the Committee. No member may serve on the Nominating Committee more than twice in five years nor two years in succession.

The Nominating Committee will receive nominations for eight board vacancies, which will expire at the Association's Annual Meeting on Thursday, June 22, and for the offices of Secretary, Treasurer, and Second Vice-President. Terms for service on the Board of Managers are for two years and commence at the Annual Meeting. Members wishing to nominate themselves or another member for an officer or for a board vacancy may do so in writing or by emailing their nomination to me at the CBA, 321 S. Plymouth Court, or [tmurphy@chicagobar.org](mailto:tmurphy@chicagobar.org). The Bylaws specify that nominations from the members must be received no later than Tuesday, March 14. A notice to the members will be sent in February identifying the members of the Nominating Committee and the timetable for completion of their work. Members are encouraged to consider a leadership position with the Association. For more information, please contact me or Tamra Drees at [tdrees@chicagobar.org](mailto:tdrees@chicagobar.org).

## CBA Administrators, Inc.

The Association offers members a wide variety of outstanding insurance products through its insurance arm, CBA Administrators, Inc. These products include: Lawyers Professional Liability Coverage; Health Insurance through IX Solutions;



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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*



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### Vanguard Awards Luncheon

The 2017 Vanguard Awards Luncheon will be held on Thursday, April 6, in the Grand Ballroom at the Standard Club. More than a dozen area bar associations participate in the Vanguard Awards Luncheon, at which each association honors a person or an institution whose leadership has made a difference in improving diversity and justice in our community. Last year's Vanguard Awards Luncheon was an SRO event and featured brief video clips of each honoree which kept the luncheon moving along on schedule. Tickets for this year's luncheon are \$70 per person or \$700 per table and can be ordered by calling or emailing Tamra Drees at 312/554-2057 or [tdrees@chicagobar.org](mailto:tdrees@chicagobar.org).

### New Member Video Service

The Association is pleased to announce a new professional video service for members and member firms. The CBA's professional video staff, led by **Ricardo Islas**, will be available to video tape brief messages from partners or associates at your firm's office, which can then be embedded into your websites and digital communications. Islas was a producer/director for WYCC Channel 20 TV, and has also produced a number of films. The CBA's new video service requires an initial \$75 consultation fee, which provides a meeting with Islas. He will discuss the

project with you, inspect your office space, test lighting and sound, etc. Following your consultation, Islas will provide your firm with a production quote, generally in the range of \$500 per lawyer for a professionally finished 3-5 minute video message.

Using video in your firm's website is an effective marketing tool, for prospective clients and for others who are considering a client referral to your firm. For more information or to schedule a consultation, call 312/554-2085 or [rislas@chicagobar.org](mailto:rislas@chicagobar.org).

### Congratulations

CBA Past President **Patricia Brown Holmes** was named the 2016 Person of the Year by *Chicago Lawyer*. Holmes is a named partner in Riley, Safer, Holmes & Cancilla, and serves as special prosecutor in the *Laquan McDonald* case. Holmes, who is also a trustee for the University of Illinois, was a founding member of the Black Women Lawyers' Association of Greater Chicago, and the second black woman to serve as President of the Association...Past President **Aurora Austriaco** will become Illinois' State Delegate to the American Bar Association following the ABA's Annual Meeting in August...U.S. District Court Judge **Richard Mills**, Central District of Illinois, celebrated 50 years on the bench... Illinois Supreme Court Justice **Thomas L. Kilbride** will receive the Advocates Society's Award of Merit at the group's annual Installation Dinner on February 16... Illinois Supreme Court Justice **Mary Jane Theis** received the Illinois Judges Association's Seymour Simon Spirit Award at the IJA's Annual Meeting in December. Other IJA honorees include: Chief Circuit Court of Cook County Judge **Timothy C. Evans** who received the Harold Sullivan Award, Retired Judges **Gino L. Divito** and **Warren D. Wolfson** received the Presidential Service Award. Judge **Lloyd A. Karmer**, Chief Justice of the Illinois Supreme Court, received the Lifetime Achievement Award, and the ISBA's **Joyce Williams** received the Gene Niezgodka Award.

Past President **Robert A. Clifford**, Clifford Law Offices, was recently appointed Chair of the ABA's Fund for Justice and Education...CBA Second-Vice President **Steven M. Elrod**, Holland & Knight, and

Judge **Carole Kamin Bellows** were honored by the Decalogue Society of Lawyers... **Earl Barnes** is the new Senior Vice President and General Counsel for Advocate Health, Inc....the Illinois Bar Foundation celebrated its 65<sup>th</sup> anniversary...**Patrick M. Collins**, a partner with Perkins Coie LLP, was admitted to the American College of Trial Lawyers...congratulations to JMLS Dean **John Corkery** on his retirement as Dean for the past ten years and 43 years as a faculty member of The John Marshall Law School...U.S. District Court Judge **Sharon Johnson Coleman** will receive the Women's Bar Association of Illinois' 2017 Mary Heftel Hooton Award and Circuit Court of Cook County Judge **Lynn Egan** will receive the WBAI's Women with Vision Award at the Association's judicial reception on March 1 at the Chicago Cultural Center...**Eileen M. Letts** and **Martin Greene**, Greene & Letts, have merged with the national firm of Zuber Lawler & Del Duca...**Timothy S. Tomasik**, Tomasik Kotin & Kasserman, LLC, spoke at ITLA's annual medical malpractice seminar...**Bill Nichols** and a group of seven members of the CBA's chorus led a holiday carol sing along for the outpatients' Children's Christmas Party at the Rehab Institute... **Berkely Cobb** and **Carlos Carabajal** are new associates at Grant Law LLC... congratulations to the following elected judges: Judge **James Leonard Allegretti**, Judge **Alison C. Conlon**, Judge **Richard C. Cooke**, Judge **Eulalia De La Rose**, Judge **Patrick Duffy**, Judge **Jerry Esrig**, Judge **Rosanna Patricia Fernandez**, Judge **Carolyn J. Gallagher**, Judge **Aleksandra Gillespie**, Judge **Carrie Hamilton**, Judge **Maureen O'Donoghue Hannon**, Judge **D. Renee Jackson**, Judge **Daryl Jones**, Judge **Edward J. King**, Judge **Steven A. Kozciki**, Judge **Matthew Link**, Judge **Anna Loftus**, Judge **John Fitzgerald Lyke, Jr.**, Judge **Freddrenna M. Lyle**, Judge **Mary Kathleen McHugh**, Judge **Leonard Murray**, Judge **Brendan A. O'Brien**, Judge **Kevin Michael O'Donnell**, Judge **Susana L. Ortiz**, Judge **Jesse Outlaw**, Judge **Patrick Joseph Powers**, Judge **Marguerite Ann Quinn**, Judge **Eve Marie Reilly**, Judge **Catherine Ann Schneider**, Judge **Patricia S. Spratt**, and Judge **William B. Sullivan**.

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The following members were selected to the *Law Bulletin's* 2016 40 Under 40 list: **Adam E. Codilis**, **Carolyn Daley-Scott**, **Michael L. Gallagher**, **Jeremy L. Geller**, **Patrick J. Giese**, **Richard Gordon**, **Christine Harney**, **J. Alex Jacobson**, **Adam Kibort**, **Paula Kim**, **Joshua Liebman**, **Kara McCall**, **Justin M. Newman**, **Tirsha Tesmer**, **Andrew Vail** and **Adam R. Vaught**...**Kevin P. Durkin**, partner at Clifford Law Offices and a past CBA President, was appointed to the Executive Committee of the Chicago Police Memorial Foundation...**Peter J. Birnbaum**, celebrated his 25th year as President and CEO of Attorneys' Title Guaranty Fund...**Perkins Coie, LLP** was recognized by Microsoft Corp as one of the top three achieving firms in Microsoft's 2016 Law Firm Diversity Program...**Patrick T. Stanton** was appointed to the Circuit Court of Cook County...**LaShonda A. Hunt** was appointed a U.S. Bankruptcy Court Judge for the Northern District of Illinois.

YLS First Vice-Chair **Jonathan B. Amarilio** and **Kristine M. Kolky** have been named partners at the Chicago office of Taft Stettinius & Hollister LLP. Amarilio focuses his practice on civil appellate litigation and Kolky focuses on complex commercial litigation...**Leslie D. Davis**, **Taylor Corbitt**, **Drahcir Smith** and **Brian O'Connor Watson** have become partners at Riley Safer Holmes and Cancila, LLP...**Gerald R. Walters**, McCarthy & Allen, and **Daniel J. Cuneo** will receive the Lawyers' Assistance Program's 2017 Joseph R. Bartylak Award...Judge **Donald J. Suriano** (ret.) has joined ADR Systems...**Patrick A. Salvi** spoke at ITLA's December 3 medical-malpractice seminar...**Samoane Williams**, First Defense Legal Aid, received

the National Service Award in Springfield...**Burton S. Odelson**, Odelson & Sterk, Ltd., was honored at IIT Chicago-Kent College of Law's 38<sup>th</sup> Annual Alumni Awards Celebration...**Kristen E. Hudson**, Principal at Chuhak & Tecson, P.C., received the Public Interest Law Initiative's Distinguished Alumni Award...**Peter V. Baugher**, Honigman Miller Schwartz and Cohn LLP, was elected a Fellow of the Chartered Institute of Arbitrators...**Daniel E. Feinberg** and **Geoffrey J. Repo** are new partners at Fox Rothschild, LLP...**Luke S. Curran** is a new associate at Banner & Witcoff Ltd...**Vaughn A. Drozd** is a new associate at Nielsen, Zehe & Antas, P.C...**Travis W. Life**, Leavens Strand & Glover LLC, was named to the Governing Committee of the ABA's Forum on Entertainment and Sports Industries...**Nicole G. Demik** and **Benjamin J. Barnett** are new partners at SmithAmundsen, LLC...**David C. Blickenstaff**, Schiff Hardin LLP, was elected a Fellow of the American College of Trust and Estate Counsel...**Austin C. Root** is a new associate at Ice Miller LLP...**John B. Sample**, Sheppard, Jullin, Richter & Hampton LLP, was elected to the Associates Board for the Chicago Committee...**Mary McKenna** and **Kevin M. MacLernery** are new associates at Sanchez Daniels Hoffman, LLP...**Kimberly S. Devine** and **Surendra K. Ravula** are new associates at Banner & Witcoff Ltd...**Robert Muriel** has joined Rob Andalman and Andy Greene at A&G Law.

**Anisha Mehta** is a new associate at Ulmer & Berne LLP...**Holly Carnell** and **Adam M. Damerow** were named partners at McGuire Woods LLP...**Joseph A. Cioffi** is a new associate at Aronberg, Goldgehn, Davis & Garmisa...**Peter J. Evans** is an associate at Patterson Law Firm LLC... **Alexander Kerr**, **Ameek Lakhani**, **Meggie F. Hogan** and **Megan Mole**, Heyl Royster Voelker & Allen P.C., were added to the firm's Chicago office...**D. Patterson Gloor** was named a shareholder at Johnson & Bell Ltd...**Henry W. Sledz, Jr.** and **Lauren S. Novak**, Schiff Hardin LLP, presented a special webinar on how the new administration will affect labor and employment law...**Cecilia A. Horan**, Hinshaw Culbertson, LLP, received the Advocate for Diversity Award from the

Diversity Scholarship Foundation...**Jarrett A. Baughman** and **Joseph D.D. Sweeny** are associates at Swanson Martin & Bell LLP...**Ashley Dus** and **Scott Kater** are new associates at Donohue Brown Mathewson & Smyth LLC...**Kenneth H. Levinson**, Levinson & Stefani, co-authored the 2016/17 edition of "Litigating Major Automobile Injury and Death Cases"...**Paul E. Wojcicki**, Segal McCambridge Singer & Mahoney, Ltd. shareholder, was elected President of the Global Warranty and Service Contract Association...**Benjamin A. Crane**, Coplan & Crane, has been elected to the American Board of Trial Advocates...**Rebecca L. Ford**, counsel at Scharf Banks Marmor LLC, will serve as a judge for the John D. and Catherine T. MacArthur Foundation's 100 & Change Competition...

Arnstein & Lehr LLP partner **Manuel Flores** was a featured speaker at the 2016 Chicago Blockchain Conference...**Ronald Kalish**, Steinberg Goodman & Kalish, was featured in a public service video about "medical payment insurance coverage following an automobile collision"...**Pamela S. Menaker**, Clifford Law Offices, and CBA Board member was appointed to the ABA's Young Litigator Task Force...**Daniel G. Coman** and **Lynn E. Cagney** are new partners at Ice Miller, LLP... **Michael H. Erde, P.C.**, was a featured speaker at Half-Moon Education Inc...**James T. Rohlfing** and **W. Matthew Bryant**, partners at Arnstein & Lehr LLP, presented a webinar on "Litigating and Negotiation Construction Contracts" to the Masons Contractors Association of America...**James H. Schink** has become a partner at Quinn Emanuel Urquhart & Sullivan, LLP... Judge **Thomas Hogan** (ret.) and Judge **Sheila Murphy** (ret.) are co-chairs of the Association's Interfaith Committee, which is providing Restorative Justice Training Programs to kids at the Bradwell School of Excellence and the O'Keefe School of Excellence.

Birthday wishes to Judge Joel Flaum, who is ageless!

### Condolences

Condolences to the family and friends of **Willis R. Tribler**, Judge **Jerome Lerner** and **Jack Ring**. ■



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**ABA** LAW  
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By Anthony F. Fata and Corey M. Martens

Mitigating, Detecting, and Dealing with Employee Fraud

# The Problem of the Inside Job



**Employee fraud is a ubiquitous problem that wreaks havoc on businesses of all sizes. A 2016 study by the Association of Certified Fraud Examiners estimates that employee fraud costs businesses around the globe \$3.7 trillion per year. According to *Global Profiles of the Fraudster: Technology Enables and Weak Controls Fuel The Fraud* (May 2016), which is compiled from approximately 750 investigations conducted by KPMG’s global forensic practice in 81 countries, employee fraud is a growing scourge, particularly for those businesses that have no mechanisms in place to stop it.**

**B**IG BUSINESS, DESPITE MORE ROBUST INTERNAL controls, is not immune. Take, for example, the \$7 billion loss triggered by rogue traders at French banking giant Société Générale in 2008. Small businesses, despite fewer moving parts, face danger as well. An Indiana McDonald’s franchise realized this after its drive-through attendant used a skimmer to steal more than 100 credit card accounts. Even law firms face the risk of employee fraud as the seminal insider trading decision, *United States v. O’Hagan*, 521 U.S. 642 (1997), demonstrates. There, a partner at the Minneapolis law firm Dorsey & Whitney misappropriated information gleaned from his partners about an imminent takeover bid for Pillsbury and made \$4.3 million on inside trades. Worse yet, his motive for the insider trading was to repay money he had previously embezzled from client trust funds.

In short, every employer faces the risk of fraud from within. There are many ways to mitigate the risks, and businesses and their counsel would be well-served to explore them.

#### **Who Is the Typical Employee-Fraudster?**

According to KPMG’s *Global Profiles of the Fraudster*, the typical fraudster is: between the ages of 36 and 55 (69%); male (79%), although the percentage of female fraudsters is rising; regarded by others as “friendly;” views herself as “well-respected” within the organization; and has been with the organization for at least four years. The hallmarks of trust—maturity, tenure and reputation—can also be harbingers of fraud. In addition, 32% of fraudsters were non-executive management, 26% were executive directors, 20% were staff members, and the remainder held a mix of positions within the company or came from outside the company.

#### **What Motivates the Fraudster?**

It should come as no surprise that the majority of fraudsters (66%) are motivated by personal financial gain. But a great deal of fraud is motivated by organizational culture (13%). And within the “greed” genre, there are subgenres: a desire to meet targets or hide losses for compensation reasons (12%);

the need to meet budgets or hide losses to retain a job (12%); and the quasi-altruistic goal of protecting the company (11%). Each of these motivations can be thwarted, to some degree, by a written code of ethics and a strong culture of compliance with law and regulation.

#### **Are Fraudsters Lone Wolves or Pack Hunters?**

Many imagine employee fraudsters as solitary individuals who rely upon their own ingenuity to perpetrate the crime after hours or beyond plain view. In reality, 62% of fraudsters colluded with others, and typically collusive fraud schemes cost the company much more than solo-actor schemes, according to KPMG’s *Global Profiles of the Fraudster*. Collusion is particularly common among more senior employees who tend to rely on those within the company, and those beyond its walls (suppliers, vendors, business partners and customers) to perpetrate the fraud.

#### **What Types of Employee Fraud Are Lurking?**

The most prevalent means of fraud, according to *Global Profiles of the Fraudster*, is the misappropriation of assets (47%) followed by financial misreporting (22%). But there are limitless ways in which these or other types of frauds are committed. Blacks Law Dictionary (1995 ed.) defines “fraud” as “embrac[ing] all multifarious means which human ingenuity can devise, and which are resorted to by one individual to get advantage over another by false suggestions or by suppression of truth, and includes all surprise, trick, cunning, dissembling, and any unfair way by which another is cheated.” Over time, employees have devised innovative and cunning methodologies for perpetrating their schemes. For this reason, robust internal controls and rapid response to fraud threats are imperative for businesses of all sizes.

#### **How is Employee Fraud Detected?**

About 43% of fraud is detected through formal whistleblowing programs (20%) and informal tip offs and complaints (23%), according to KPMG’s *Global Profiles of the Fraudster*. These

## Level of seniority



Source: Global Profiles of the Fraudster, KPMG International, 2015

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figures bode favorably upon companies that have cultures of reporting and robust whistleblower or hotline programs. Other detectors of fraud include management review (22%), accidental discovery (14%), internal audit (14%), suspicious superiors (10%), or some combination of the foregoing.

### What Risks Does Employee Fraud Present?

Employee fraud presents obvious financial risks such as missing money or disappearing assets. Almost 42% of the fraudsters studied by the KPMG investigators in *Global Profiles of the Fraudster* cost their companies at least \$1 million. Businesses must also take into account costs associated with investigating, remediating, and litigating disputes and regulatory issues stemming from the fraud. “When a [major] corporation is caught in a government investigation, the legal fees can quickly exceed \$100 million—and that’s before the lawsuits even begin.” Peter J. Henning, *The Mounting Costs of Internal Investigations*, *New York Times* (Mar. 5, 2012). Even small businesses can experience relatively large legal and investigation costs associated with fraud.

Employee fraud also presents reputational risks, sometimes referred to as

“organizational stigma.” According to *The Scandal Effect*, Harvard Business Review (Sept. 2016), “[o]ther organizations may sever relationships with them or try to take financial advantage of the situation” and they may be “mocked in the media, have their charitable donations rejected, see employee morale plunge, and experience an exodus of talent.”

The directors, executives and other managers of multi-owner businesses face a unique set of liabilities. Management owes a fiduciary duty of care to shareholders, partners and LLC members. These duties translate directly into “oversight” responsibilities. Not every employee fraud will result in liability to management. However, where management “utterly failed to implement any reporting or information system or controls” or, having done so, “consciously failed to monitor or oversee its operations thus disabling themselves from being informed of risks or problems,” liability may attach. *In re Huron Consulting Group, Inc. Shareholder Derivative Litig.*, 2012 IL App (1st) 103519 103519, ¶49, 971 N.E.2d 1067, 1083.

Frauds involving customer funds or information involve additional litigation risks. For example, when executives at futures commission merchant MF Global

were accused of having misappropriated customer funds to cover bad proprietary bets, the company faced an onslaught of litigation from regulators such as the Commodity Futures Trading Commission, customers whose funds were misappropriated, and shareholders demanding to be made whole by management. Likewise, when Home Depot suffered a cyber breach involving customer information, it was faced with class action litigation and had to fund a \$13 million settlement and the costs of credit monitoring for impacted customers.

### What Role Do “Internal Controls” Play?

“Internal controls” broadly refer to a company’s system for protecting company assets, whether financial, physical or intellectual. The types of internal controls are unlimited and can be tailored to the size and nature of the business at issue.

One universal truth, however, is that weak internal controls are a significant contributing factor to employee fraud. According to *Global Profiles of the Fraudster*, 61% of fraud is the product of weak internal controls, and another 11% is the product of collusion circumventing good internal controls.

Obviously, the more complex the organization, the more complex the internal controls. These controls should be designed by taking into account universal guidelines such as those contained in the Internal Control--Integrated Framework published by the Committee of Sponsoring Organizations of the Treadway Commission. However, simply designing controls won’t be sufficient, as an organization must regularly test and assess the effectiveness of its control environment: this is critical for maintaining an effective mechanism to assist with preventing and detecting fraud.

Even small businesses can implement controls that help prevent and detect employee fraud risk. For example, businesses that receive payments by cash or check should not have the employee who receives payments also record the transactions in the books or reconcile accounts. Rather, separate employees should be designated or, at minimum, the business should have a high-level manager or owner directly

## What was the overriding motivation for fraudster?



Source: Global Profiles of the Fraudster, KPMG International, 2016



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oversee the functions on an ongoing basis (i.e., segregation of duties). Likewise, all purchases, payroll and disbursements should be authorized by a senior-level manager. And conflicts of interest arising from transactions with an employee’s family member or friend should be prohibited or, at minimum, closely supervised.

In addition to mitigating risk, strong internal controls lead to detecting the fraud. According to *Global Profiles of the Fraudster*, more than 70% of fraud was detected by internal controls alone or in conjunction with other factors such as whistleblowing.

### Is Internal Whistleblowing Helpful?

As noted above, internal whistleblowing and informal tips are the most common means of fraud detection. And, according to *Global Profiles of the Fraudster*, internal whistleblowing is critical to detecting sophisticated forms of fraud designed to circumvent even the strongest of internal controls. Businesses should establish a culture of compliance and promote, rather than discourage, internal whistleblowing. In addition to detection, a proper whistleblower program has other benefits. For example, it demonstrates a “tone at the

top” and an organizational culture that encourages a commitment to compliance with the law. A culture of compliance is critical when dealing with regulators under, for example, the United States Federal Sentencing Guidelines.

The specifics of a strong whistleblower program depend on the unique characteristics of the organization. There are, however, core principles. A strong whistleblower program has the full support of management. It allows for anonymous tips to mitigate fear of retaliation from coworkers (note, however, some countries prohibit anonymous internal whistleblowing). A strong whistleblower program will designate an impartial person to receive the tips. Reporting should be available around the clock via multiple means (phone, email and text). And those on the receiving end of the whistleblower hotline should immediately begin investigating any credible tip. Finally, a proper whistleblower program expressly prohibits retaliation. Indeed, anti-retaliation policies are essential in many industries, such as the securities and commodities industries governed by the Dodd-Frank Act.

### What About Employee and Third Party Background Checks?

Another key first step in avoiding fraud is performing proper background checks on all employees. A background check program begins with requiring the applicant to provide information (usually on an application form) *and supporting documentation* concerning prior employment, education, certifications, addresses and criminal events. Independent checking of claims is critical, depending on the importance of the post. Even the most extreme resume padding can occur. Take, for example, the embarrassment Notre Dame suffered when it hired George O’Leary to be its head football coach, only to find out shortly thereafter that he had misrepresented his college football career and never obtained a masters from “NYU-Stony Brook University,” a school that does not even exist. Certain documents should be provided in their original form for verification, with copies retained by the employer. Requiring a certification or signature attesting to the accuracy of the information is helpful as well. Third party vendors should be employed to perform appropriate criminal records searches and

# Companies rely heavily on tip-offs to catch fraudsters.

Whistle blowers and other tips

43%

Other forms of detection

Management review

22%

Accidental

14%



[kpmg.com/fraudster](http://kpmg.com/fraudster)

other background investigation. Employers should also scale background checks to the risk the particular position presents to the company and its customers.

Many companies also overlook the risk that counterparties present. According to *Global Profiles of the Fraudster*, 32% of fraud events resulting in \$1 million or more in losses was committed by employees colluding with outsiders. These outsiders can include vendors, suppliers or customers. Yet these third-parties are seldom subject to the same background checks as employees. A thorough third-party diligence system is critical for businesses of all sizes.

## Insurance

Most businesses are familiar with commercial liability, errors and omissions, director and officer liability, business interruption and hazard insurance. Fewer are familiar with “employee dishonesty” coverage, which helps alleviate losses in the event of employee fraud. For example, according to one Arthur J. Gallagher & Co. case study, this type of policy helped a large

public university recover losses when its treasury department employee fraudulently invested university funds in a Ponzi scheme in exchange for a kickback from the scheme. Such insurance would seem especially critical when the recipients of the ill-gotten gains have either squandered the money, sent it offshore, or otherwise made it impossible to recover.

## How Should a Fraud Be Investigated?

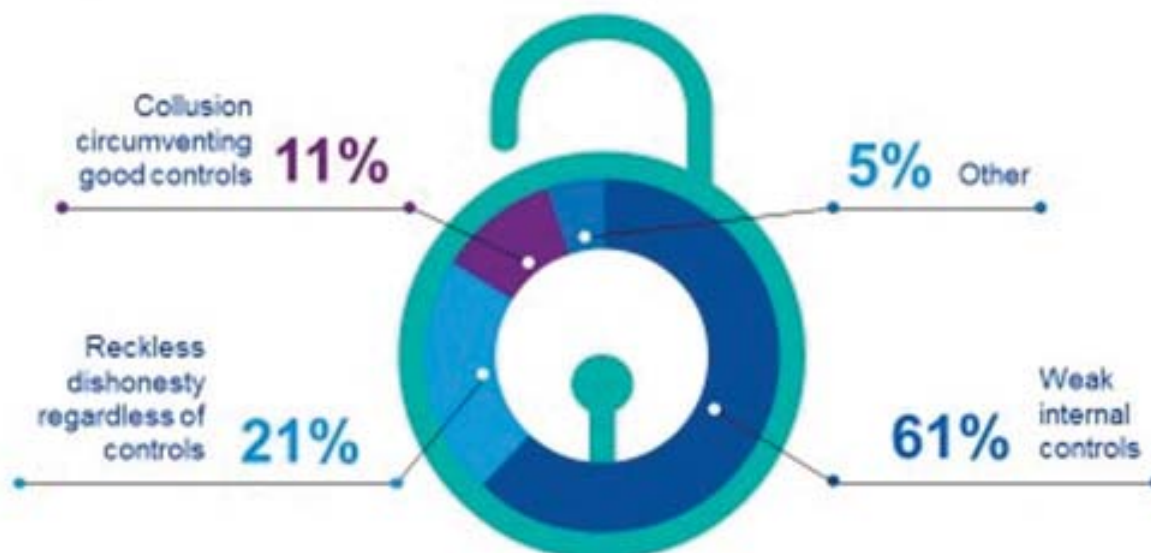
When an employee fraud is detected, the company must take immediate steps to investigate and remediate. No single set of rules exists for investigations, but effective investigations share many common characteristics. They are expeditious, but thorough and broad enough to capture the full extent of the employee fraud and its various components. The investigators who review documents and interview witnesses should be impartial and free of biases. Documents, hard drives and other electronic materials should be immediately preserved lest they be destroyed through routine policies or concealment by the

fraudsters and their cohorts.

At the outset of an investigation, care must be taken to identify the precise client of the investigation team. Is it the company? The board? A special committee created by the board such as the audit committee? This question is imperative because, at the end of the investigation, some type of report (verbal or written) will be made. To preserve the attorney-client privilege, the report should be made only to the client.

Individuals conducting employee interviews during the course of the investigation should give warnings to the employee fraudsters or coworkers in line with the seminal Supreme Court decision, *Upjohn Co. v. United States*, 449 U.S. 383 (1981). *Upjohn* established the corporate attorney-client privilege for employee interviews conducted during internal investigations. So-called “Upjohn Warnings” inform the interviewee that: the company (not the employee) is the client; the employee is not being represented by the person conducting the interview; the communication is subject to the attorney-client privilege;

# Enablers — weak controls



and the company holds the attorney-client privilege and it alone can choose to waive it. Failing to provide a proper Upjohn Warning can result in the waiver of the attorney-client privilege, put the person conducting the interview in a conflict situation, or raise the ire of regulators.

Multinational companies and their outside advisors must take care to ensure that the investigation is conducted in compliance with the law of the country from which documents and computer files will be taken and where interviews will be conducted. Some countries require employers to specifically notify their employee if he or she is the subject of an investigation. Other countries prohibit computers and documents from being taken out of the country as part of an investigation. This patchwork of cross-border rules and regulations requires detailed attention. Even countries operating exclusively within the United States need to navigate the rules of each state concerning employee rights and privilege issues.

## What Should Be Done at the Conclusion of a Fraud Investigation?

At the conclusion of an investigation (or perhaps sooner), businesses need to decide whom to contact. Is regulatory notice necessary? Should the police be contacted? Did

the fraud impact lending warranties? Does the insurer need to be notified? Do customers have a right to know? Do external auditors need to be notified? Answers to each of these questions, of course, depend on the nature of the business and fraud at issue.

Another critical step is reviewing the internal controls to determine what led to the fraud, how it could be duplicated in other business units or by other employees, and how internal controls should be improved.

Finally, there is always the threat of litigation following employee fraud. The company and management may face shareholder, regulatory, customer or other lawsuits, as discussed above. But they need not remain purely defensive. Businesses that have been defrauded have every right to explore and pursue claims against the fraudsters, their colluders, and third parties that enabled the fraud.

## Conclusion

Employee fraud is a growing scourge that impacts businesses of all sizes. Simply assuming “it won’t be us” is a path fraught with peril both for companies and management. The fraudster profiles and risk-mitigation mechanisms discussed above provide means for mitigating the likelihood of employee fraud and dealing with it should a problem arise. ■

## Update Your Contact Info

If you recently moved, joined a new firm, created a new email account, got a new phone number, etc. please take a moment to update your member profile. You can do this online at [www.chicagobar.org](http://www.chicagobar.org), click on Update Profile which is located on the home page, left column or call 312/554-2135 or send an email to [kbryan@chicagobar.org](mailto:kbryan@chicagobar.org).

*Anthony F. Fata is a partner at the law firm of Cafferty Clobes Meriwether & Sprengel LLP and teaches Securities Regulation and Corporate Governance as an adjunct professor for Seton Hall University School of Law's Masters in Jurisprudence Program. Corey M. Martens, CPA, CFF is a partner in KPMG's Forensic Investigation Services practice in Chicago.*

By Judge Sophia H. Hall

The Reality of Restorative Justice

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# The Community Restorative Justice Court





**Violence afflicting Chicago neighborhoods as reported in the media has devastated the morale of our city. Chicago is not alone, as the news media has covered similar stories of such violence occurring in other cities across the country. Out of shock or frustration, many have turned to the concept of restorative justice as a way to find solutions.**

**WHAT IS RESTORATIVE JUSTICE? IT IS A PHILOSOPHY.**  
It is about building and restoring right relationships in our lives. It is about respectfully seeking to understand our differences so positive relationships can exist. It is about making peace so that we can live productively together. Its practices can be a path toward reducing violence in our communities.

How does this approach work? What does it look like? An example of restorative justice processes in action is seen in the development of the first Restorative Justice Community Court in North Lawndale.

This initiative is about the community of North Lawndale becoming stronger for its youth. It relies on the strengths and hopes of its residents and others who seek to make North Lawndale the best place possible for youth to grow up and become irresistible forces for change in our communities. Residents and others in the community, through the North Lawndale Community Restorative Justice Hub in partnership with the Circuit Court of Cook County, will create the North Lawndale Restorative Justice Community Court. The Court will serve the emerging adult population of ages 18 to 26, and is targeted to open in 2017.

### **North Lawndale Community Restorative Justice Hub**

The North Lawndale Community Restorative Justice Hub focuses the community's efforts to build a safe, healthy and thriving community for all. The Hub is composed of a collaboration of almost 30 organizations in the community. One of the organizations is the Lawndale Christian Legal Center headed by Cliff Nellis. The Hub is driven by the strengths, character, resources and relationships of the members of its community built over the years. The members work together to create opportunities and services for all, particularly youth.

The North Lawndale Hub is one of several other Hubs in the City, including the Back of the Yards and Little Village neighborhoods, and others developing in other Chicago communities. The Hub concept has grown over the years, and is modeled after the work of Father David Kelly of the Precious Blood Ministries in Back of the Yards. The concept is grounded in using restorative practices to develop and nurture the relationships among those using those practices to serve youth and their families.

### **Five Pillars**

The heart of a Community Restorative Justice Hub is its adherence to the five Pillars which guide the implementation of the Hub concept. They are radical hospitality, accompaniment, family relationships, relentless engagement and collaboration among the Hubs.

Radical hospitality involves providing space where youth feel welcome, respected and safe as they navigate the challenges facing them. Accompaniment is the continuing support of the youth by mentors and others as the youth face their challenges. Family relationships, an important part of our lives, is a focus of the relationships built among those served by the Hub.

The fourth Pillar, relentless engagement, is the advocacy by Hub members with systems and stakeholders to obtain the resources and services that are needed to sustain the Hub and those it serves. The fifth Pillar is in the collaboration and relationships among the Hubs allowing them to learn from each other, and to join each other in seeking and guiding monies from the government and profit and not-for-profit organizations to provide services.

These five Pillars focus the path of the Hub participants in building the relationships necessary to be of service to youth and the youth's community. The North Lawndale Community Restorative Justice Hub, already implementing these Pillars, is an effective partner with the Court to create the North Lawndale Restorative Justice Community Court.

### **The Circuit Court of Cook County**

The Circuit Court of Cook County comes to this partnership with a history of restorative justice outreach. Over the past 15 years the Resource Section of the Juvenile Court, presided over by Presiding Judge Sophia H. Hall, has promoted restorative justice throughout the City, County and State. Chief Judge Timothy C. Evans provided a full time Programs Administrator Minister, Attorney Michelle Day, who assists with the Section's work.

The Resource Section's restorative justice work, coincidentally, began in North Lawndale after the passage of the Juvenile Justice Reform Act in 1999. In 2000, the Steans Family Foundation, which was already working in North Lawndale, reached out to Judge Hall to partner in starting a conversation in North Lawndale



about using restorative justice practices. Together, and with the help of the Juvenile Probation Department and the State's Attorneys' Office, they reached out to work with community members and representatives from the schools and police located in North Lawndale.

The Resource Section also established the Citywide Restorative Justice Committee in 2001. The Committee provides a continuing and consistent place for persons interested in restorative justice to learn about restorative practices and how some were already using these practices in Chicago and Cook County. The Committee has been meeting three times a year. The meetings are attended by from 60 to 80 people, representing a wide range of participants including lawyers, judges, probation officers, persons from all levels of government, city, county and state, public and private organizations, faith based organizations, social service agencies and educational institutions.

The Citywide Committee has been, and still is, a learning community for restorative justice proponents. Members have worked together and with others to spread the experience and understanding of restorative justice philosophy and practices. They have created numerous educational conferences.

### Conferences

In September 2003 the first statewide conference, "Statewide Balanced and Restorative Justice Summit," was held in Springfield, Illinois, and funded by the Illi-

nois Criminal Justice Information Authority. In March 2005, another statewide conference was held in Springfield called the "Juvenile Justice Educational Training Conference." It provided deeper information about restorative justice practices such as Restorative Justice Group Conferencing, Peacemaking Circles, Victim Offender Conferencing and Restorative Peer Juries. In November 2007, the "First Annual Collaborative Juvenile Justice Conference: Connecting the Pathways," was also held in Springfield. Around this time the Illinois Balanced and Restorative Justice Initiative was established to focus statewide discussions of restorative justice efforts.

In Chicago, in 2010, the Citywide Committee hosted the "Transforming Justice for Youth, Family and Community" Conference. Inviting several high schools and persons in their neighborhood, the participants at the conference discussed how to improve relationships among them utilizing restorative practices. Thereafter, in June 2014, recognizing the fact that race and trauma are such a major part of serving youth, the "Conference on Race and Trauma," designed by members of the Citywide Committee, was held in Chicago. Other conferences, meetings and trainings on restorative justice have been sponsored by other groups over the years across the city, county and state.

This long history of educational and networking opportunities for restorative justice advocates and practitioners has contributed to the growing interest in and strength of the restorative justice

movement in Chicago, Cook County and Illinois. Many of the attendees at these conferences and the Citywide meetings occupy positions in the administrative structures of our City, County and State. They have used their knowledge of restorative philosophy and practices to advocate for and support expanding the use of restorative practices.

### The Restorative Justice Community Court

With the lengthy history of restorative justice work in North Lawndale and the City and County as a whole, it is no surprise that North Lawndale and the Court are embarking together on the journey to establish a Restorative Justice Community Court in North Lawndale. Other system partners include representatives from the County and the Offices of the States Attorney and Public Defender.

The Restorative Justice Community Court initiative looks beyond punitive processes. It incorporates restorative justice philosophies and practices into every aspect of designing and operating the Court, and serving the citizens who appear. Restorative processes will be used to identify harms done to those involved in the cases referred to the Court. The processes explore the needs of those affected, including offender and victim, and help them appreciate their obligations to each other. Then they work together to repair the harms done to all. This is the restorative way to hold all accountable to each other, and to heal broken relationships, rather than exacerbate the breakdown.

A steering committee has been established to design how the court and community will work together to engage all in these restorative processes. The committee is co-chaired by Judge Colleen Sheehan and Cliff Nellis. The committee and its workgroups include a diversity of life experiences and perspectives of representatives of the North Lawndale community, its elected officials and faith based organizations, school administrators, social service providers, police, and representatives from the court, the county administration, and the Offices of the States Attorney and Public Defender.

This inclusion of a diversity of the perspectives of the members of the Steering Committee and workgroups insures

that the work will be fully informed. This diversity is the strength of the initiative. To effectively engage their strengths, the members of the Steering Committee explicitly use restorative practices to reach an agreement on their values and the guidelines which will govern their conversations. Through the discussions, the members' talents are revealed, appreciated and utilized. Any disagreements are vented through restorative practices which require listening respectfully and speaking without interruption in the safe environment created by the Committee.

The deepening of the Steering Committee and workgroup members' understanding of how restorative justice processes build effective working relationships among them will give them a better understanding of how to serve youth and their families in a restorative way. Through these conversations, the members will be able to do their best work to establish sustainable restorative processes for the North Lawndale Community.

Some of the members of the Steering Committee are already informed about

restorative philosophy and practices from attendance at Citywide Restorative Justice Committee meetings, training and educational conferences. They have learned that the philosophy of restorative justice is both a public and personal path toward peace. They have learned that the restorative path eschews primal reactions of fear of those who are different. Restorative Justice instead embraces the belief that all humans are worthy of respect as members of the human family.

#### Conclusion

Reducing violence in our communities by providing effective alternatives for youth and emerging adults at risk is an underlying premise of the partnership between the North Lawndale Community Restorative Justice Hub and the Court in creating the Restorative Justice Community Court in North Lawndale. Using restorative practices will ensure that service to the citizens of the North Lawndale community will be effective and sustainable over time.

A peaceful community is not a static state, but is the result of ongoing efforts

## 2017 ATTORNEYS DIARY

### STILL AVAILABLE

The 2017 edition of the CBA's hard copy leather bound *Attorneys Diary* is still available for \$21.50 (member price including tax) in the CBA Bookstore, open Mon-Fri 9am-4:30 pm. Copies can also be ordered online and mailed for an additional \$7.95. Questions, call 312/554-2135.

by all of its members actively engaged in inclusion and restoration for the benefit of all. That is the mission of the collaboration that will support and sustain the Community Restorative Justice Court in North Lawndale. ■

---

*Judge Sophia H. Hall is the Presiding Judge of the Juvenile Justice and Child Protection Division of Cook County's Circuit Court. She also sits in the General Chancery Division.*



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**Human Trafficking  
Awareness Month**

**By Kathryn Carso Liss  
YLS Chair**

January is Human Trafficking Awareness Month. As our YLS theme this year is Protecting Our Children, the CBA has designated the last week of this month to raise awareness toward this topic, specifically as it pertains to children.

The sex trade industry is believed to exist in almost every major U.S. city and affects every demographic. The National Human Trafficking Resource Center reported 122 human trafficking cases in 2015 in Illinois alone. There were likely many more cases which were not reported in 2015. People may think that human trafficking does not affect their community. However, it very well may, and until a community can identify, intervene with, and support people who are susceptible to trafficking, trafficking will unfortunately continue to the detriment of hundreds and thousands of people.

The reason why is money. Human trafficking is a hugely profitable business. The International Labor Organization estimates that human trafficking globally is a \$150 billion industry. According to a 2014 report by Urban Institute, pimps and traffickers in the underground commercial sex trade in eight major U.S. cities received between \$5,000-\$32,833 per week.

Two types of human trafficking are labor trafficking and sex trafficking. Both types are considered forms of modern slavery, as the person being trafficked is not allowed to willingly leave the ‘trafficker’ (i.e. the person exploiting the vulnerable individual). The trafficker physically or psychologically coerces an individual to do something against their will. The constant manipulation used on these vulnerable individuals and the repeated abuse of the individuals is devastating.

In labor trafficking, the trafficker often gives a false promise of a high-paying job, education, travel or something else appealing to a vulnerable individual. Once the individual accepts the job offer, they are placed into awful working conditions, work long hours, and are either not compensated or barely compensated. Surprisingly, this type of trafficking currently exists within the U.S. likely due to a worker’s immigration status, existing debt, their poverty level, or a lack of labor protections. Between 2007 and 2015, the National Human Trafficking Resource Center reported more than 4,000 labor trafficking cases inside the United States. Globally, the International Labor Organization estimates 14.2 million people are trapped in forced labor, specifically within agriculture, construction, domestic work, and manufacturing. The U.S. Department of Labor identified 136 goods from 74 countries made by force and child labor. This is only what has been detected thus far.

“Sex trafficking of minors” is included in the broader definition of sex trafficking, as contained in the Trafficking Victims Protection Act of 2000: “the recruitment, harboring, transportation, provision, or obtaining of a person for the purpose of a commercial sex act...in which a commercial sex act is induced by force, fraud, or coercion, or in which the person induced to perform such an act has not attained 18 years of age” (22 USC § 7102; 8 CFR § 214.11(a)). When a trafficked person is a minor (i.e. under the age of 18), 18 U.S.C. § 1591 mandates that the minor is a victim of sex trafficking regardless of whether or not the trafficker used force, threats of

*continued on page 52*

*The Chicago Bar Association  
Young Lawyers Section presents*

# 2017 Human Trafficking Awareness Week

The commercial sex trade industry isn't just an international issue, it's a U.S. issue too.

Child trafficking has been documented in all 50 states. Join the Young Lawyers Section at one or more of our Human Trafficking Awareness Week events and learn how you can take meaningful action to help protect children and make a difference.

January 23

## **Every Person has a Voice: Exposing, Examining, and Eradicating Human Trafficking**

3:00-6:30 p.m. | The Chicago Bar Association  
Complimentary | 2.75 IL MCLE Credit

An in-depth look at issues, concerns and remedies aimed to address the exploitation of individuals through human trafficking both domestically and globally.

January 24

## **CAASE Know Your Rights Training**

12:00-1:30 p.m. | The Chicago Bar Association  
Complimentary | 1 IL PR-MCLE Credit, subject to approval

Attorneys and law students are invited to take part in Chicago Alliance Against Sexual Exploitation's (CAASE) public service initiative to help victims of sex trafficking understand their legal rights.

January 25

## **A Path Appears, Episode One: Sex Trafficking in the USA**

12:00-1:30 p.m. | The Chicago Bar Association  
Complimentary | Includes Lunch

Special guest Laurel Bellows will introduce and join us for a showing of the gripping film, "A Path Appears, Episode One: Sex Trafficking in the USA."

January 26

## **Laughter for Lives Social and Benefit for Anne's House**

6:00-8:00 p.m. | The iO Theater  
Special thanks to Taft Stettinius & Hollister LLP

Come see a hilarious performance of "Whirled News Tonight" where audience members provide the inspiration for an evening of improvised comedy direct from the day's newspaper headlines! \$40 for lawyers / \$30 for law students, with a portion of every ticket sale benefiting Anne's House. Drinks and light appetizers are included.

January 27

## **A Spotlight on Child Trafficking in Chicago**

12:00-1:00 p.m. | The Chicago Bar Association  
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Rohit Chandra, Cook County Office of the Public Guardian, and Queona Whitfield, assistant director of the Salvation Army PROMISE Program's Anne's House (a long term trauma-based residential program for women and girls impacted by sexual exploitation), will lead a discussion on child trafficking in Chicago.

Learn more and register:

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## HOW YOU CAN SERVE THOSE WHO SERVED

# Not Just JAG

By Edward M. Farmer



Since September 11, 2001, hundreds of thousands of service members in the Reserves and National Guard have been called to active duty to fight in Iraq, Afghanistan, and other locations throughout the world. When these service members are called to duty, they must leave their civilian lives behind, pick up a weapon, and go serve where Uncle Sam instructs. You may be under the impression that the military's lawyers, the Judge Advocate General Corps, handle the legal needs of these service members. However, this could not be further from the truth. Civilian attorneys are often in the best

position to handle the legal issues that affect National Guard and Reserve members. In fact, the legal issues of veterans and service members span many legal areas, including: employment law, landlord-tenant issues, consumer collections, contract law, social security, and other civil litigation. With tens of thousands of Reservists and National Guard members in the Chicagoland area, you may already have a client with a legal issue unique to the citizen soldier.

Consider if your client, PFC Brown, is a member of Army National Guard and is being deployed to Iraq for a year. She asks

you to help put her affairs in order before she leaves next week. The scenarios below involving PFC Brown illustrate that no matter what area of law you practice, a National Guard or Reserve member may be in need of your services.

### Landlord-Tenant Issues

*PFC Brown recently signed a lease for a new apartment. She will be deployed before the lease is up. Will she be able to get out of the lease? What if she cannot afford the rent and the landlord begins eviction proceedings?*

The Servicemembers Civil Relief Act ("SCRA") includes a "military orders

clause,” which gives National Guard and Reserve members the right to terminate leases in the event they are deployed to Federal active duty for more than 180 days. The service member must provide the landlord a copy of their military orders and notice that the lease will be broken due to his or her military activation. The service member will owe rent for the rest of the month in which notice is given, as well as the next month.

Further, unless by court order, a landlord is not permitted to evict an active-duty service member unless his or her rent exceeds \$3,451.20 per month (for 2016). The service member must show that his or her ability to pay was diminished due to service.

**Debt and Loans**

*While on Active Duty, PFC Brown will experience a large drop in income from her civilian employer. She incurred credit card debt while in college. She is worried that the reduction in income will cause her to fall behind on some of her credit card debt. What are her options?*

One of the most popular provisions of the SCRA is Section 527, which allows service members to reduce the interest rate on loans to six percent for military members on active duty. The loan must have been incurred before the entry of active duty service. Any interest above six percent is forgiven and not deferred. This provision applies to several types of loans, including home mortgages, business loans, and debts held jointly with spouses. To obtain the six percent interest rate, the service member must notify the creditor in writing and include a copy of their military orders no later than 180 days after the qualifying service period.

**Civil Court Proceedings**

*PFC Brown was recently sued for past-due medical bills. Her answer to the lawsuit is due in 30 days, but she will be deployed to Iraq next week. She is worried about a default judgment being entered against her. What are her options?*

Section 522 of the SCRA permits a

military member to have any type of civil court action stayed if the legitimate obligations of military service make it difficult to participate. The SCRA requires the court to stay the proceedings for ninety days or longer if appropriate. The service members request for a stay does not constitute an appearance invoking jurisdiction, and it does not waive defenses.

The SCRA also affords protection if a military member is unable to respond to a lawsuit and default judgment has been entered as a result. Section 521 of the SCRA requires that someone seeking a default judgment must file an affidavit, demonstrating that the defendant is not on active duty. If the party seeking the default judgment fails to attach the affidavit, a military member can ask the court to vacate the default judgment.

**Employment Rights**

*PFC Brown has a well-paying civilian job. Because she was deployed for over a year, she is afraid that the job will not be available once she returns. Is her job protected?*

The Uniformed Services Employment and Reemployment Rights Act (“USERRA”) controls. USERRA encourages service in the National Guard and Reserves by minimizing disruption in the service member’s civilian employment due to military service. If certain criteria are met, USERRA provides that military members have a right to return to their civilian employment as if they never left. The service member must provide advanced notice of the military duty for USERRA to apply. The notice should be in writing and advise the employer of the anticipated date of return. The service member must report back to work at the beginning of the first full regularly scheduled work period following return and a time to readjust.

USERRA further prohibits employers from considering National Guard or Reserve membership when making decisions such as hiring, promotion, and reemployment when returning from military service.

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## Disability Issues

*PFC Brown returned from her year-long tour in Iraq. She now suffers from a traumatic brain injury from a roadside bomb. She suffers from mental limitations and is worried that she will not be able to keep her job due to her disability. Does she have any protection?*

USERRA also requires employers to make reasonable efforts to assist a veteran who is returning to employment. This assistance can include training or retraining for the position. The Department of Veteran Affairs also offers vocational rehabilitation and training programs to help veterans with disabilities return to the workplace. Such assistance can involve career retraining and supplemental education. If a veteran is unable to return to work due to service-connected disabilities, they may be entitled to compensation from the Department of Veteran Affairs or the Social Security Administration.

## VA Benefits

*PFC Brown's traumatic injury is limiting her*

For a more in-depth discussion of the above issues, please view The Military Law & Veterans' Affairs Committee's CLE *Legal Issues of Veterans and Service Members* at [www.chicagobar.org/webcasts](http://www.chicagobar.org/webcasts). This CLE is offered by leading members of the Military and Veteran legal community, including Brian Claus, the Director of The John Marshall's Veteran's Legal Support Center and Clinic; Patrick Heery, a Navy JAG Officer at the Great Lakes Naval Base; and Edward M. Farmer, an adjunct professor who teaches Veteran Advocacy at The John Marshall Law School and is the owner of [www.vetlawoffice.com](http://www.vetlawoffice.com).

*ability to earn a living and provide for her family. She is seeking additional compensation for her service injuries. Is she entitled to any benefits from the VA?*

The VA provides monthly compensation for disabilities, injuries or diseases incurred or aggravated during or as a result of service. To receive service-connected disability compensation, she must show evidence of a current disability that is as likely as not related to an event that happened in service. If the disability is found related to service, the VA will assign a disability rating from 0% to 100%. The higher the rating, the higher the compensation.

If a wartime veteran is totally disabled and has limited assets and income, he or she may be entitled to a pension from the VA. Other benefits, such as those from the GI Bill, are also available to veterans who served under conditions other than dishonorable.

---

*Edward M. Farmer is a U.S. Army veteran. A majority of his career has been dedicated to assisting veterans with VA disability appeals. He is currently the owner of [www.vetlawoffice.com](http://www.vetlawoffice.com) and an Adjunct Professor, teaching law students veteran advocacy at the John Marshall Law School.*



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The Chicago Bar Association Young Lawyers Section presents  
2017 Human Trafficking Awareness Week's

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Join the Young Lawyers Section for a hilarious performance of "Whirled News Tonight" where audience members provide the inspiration for an evening of improvised comedy direct from the day's newspaper headlines. After the show, stick around for drinks, mingling and to learn about the important work Anne's House is doing for trafficking victims in Illinois.



January 26, 2017

6:00-8:00 p.m.

The iO Theater | 1501 N. Kingsbury St., Chicago

\$40 for lawyers / \$30 for law students, with a portion of every ticket sale benefiting Anne's House. Drinks and light appetizers are included in the ticket price.

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### About Anne's House

Anne's House is Illinois' first long term trauma based residential program for young women and girls who have been impacted by sex trafficking and commercial sexual exploitation. Managed by The Salvation Army PROMISE Program (Partnership To Rescue Our Minors From Sexual Exploitation), this trauma based program offers comprehensive services including, but not limited to, individual and group therapy, life skills training, support with academic and vocational goals, social and recreational activities and spiritual guidance. The program services females from the United States, without children in their custody, ages 12 to 21 who are actively being commercially sexually exploited (sex trafficked).



The commercial sex trade industry isn't just an international issue, it's a U.S. issue too. Child trafficking has been documented in all 50 states. Join the Young Lawyers Section at one or more of our Human Trafficking Awareness Week events and learn how you can take meaningful action to help protect children and make a difference.

# LEGAL ETHICS

BY JOHN LEVIN

## Illinois to Consider New ABA Model Rule 8.4g

Currently, Illinois Rule of Professional Conduct 8.4 (Misconduct) states that it “is professional misconduct for a lawyer to:

(j) violate a federal, state or local statute or ordinance that prohibits discrimination based on race, sex, religion, national origin, disability, age, sexual orientation or socioeconomic status by conduct that reflects adversely on the lawyer’s fitness as a lawyer. Whether a discriminatory act reflects adversely on a lawyer’s fitness as a lawyer shall be determined after consideration of all the circumstances, including: the seriousness of the act; whether the lawyer knew that the act was prohibited by statute or ordinance; whether the act was part of a pattern of prohibited conduct; and whether the act was committed in connection with the lawyer’s professional activities. No charge of professional misconduct may be brought pursuant to this paragraph until a court or administrative agency of competent jurisdiction has found that the lawyer has engaged in an unlawful discriminatory act, and the finding of the court or administrative agency has become final and enforceable and any right of judicial review has been exhausted.”

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

This Rule was adopted at a time when the ABA Model Rules had no specific rule that addressed discriminatory behavior on the part of a lawyer. Rather, as stated in Report 109 of the ABA Standing Committee on Ethics and Professional Responsibility (dated August 2016), the issue was addressed in “Comment [3] to Model Rule of Professional Conduct 8.4, Misconduct which explains that certain conduct may be considered “conduct prejudicial to the administration of justice,” in violation of paragraph (d) to Rule 8.4, including when a lawyer knowingly manifests, by words or conduct, bias or prejudice against certain groups of persons, while in the course of representing a client but only when those words or conduct are also “prejudicial to the administration of justice.”

After extensive preliminary discussions followed by formal debate, the ABA House of Delegates recently adopted an amendment to Rule 8.4 that specifically states that “it is professional misconduct to:

“(g) engage in conduct that the lawyer knows or reasonably should know is harassment or discrimination on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, gender identity, marital status or socioeconomic status in conduct related to the practice of law. This paragraph does not limit the ability of a lawyer to accept, decline, or withdraw from a representation in accordance with Rule 1.16. This paragraph does not preclude legitimate advice or advocacy consistent with these rules.”

Comment 3 to the Rule states: “Discrimination and harassment by lawyers in violation of paragraph (g) undermine



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/legaethics/>.

### 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](mailto:lwells@chicagobar.org).

confidence in the legal profession and the legal system. Such discrimination includes harmful verbal or physical conduct that manifests bias or prejudice towards others. Harassment includes sexual harassment and derogatory or demeaning verbal or physical conduct. Sexual harassment includes unwelcome sexual advances, requests for sexual favors, and other unwelcome verbal or physical conduct of a sexual nature. The substantive law of antidiscrimination and anti-harassment statutes and case law may guide application of paragraph (g).”

It takes only a cursory reading of the Model Rule to see how it broadens the definition of misconduct over that in the current Illinois Rule.

The amendment has come before the Illinois Supreme Court for adoption. It generated much debate within the ABA before its final adoption. There are arguments both for and against adoption of the Rule, and reasonable people can have differing opinions. However, the debate within the ABA indicates that the amendment was generated because of a real need, and I believe it should be adopted in due course. ■

## CBA Announces Support Of Illinois Rules Of Professional Conduct

### Proposed Rule 8.4G—Additional Conduct Guidance For Attorneys

The CBA's Board of Managers announced its support for the American Bar Association's Model Rule of Professional Conduct 8.4(g) which, if adopted by the Illinois Supreme Court, would add additional language specifically prohibiting discrimination and sexual harassment to Illinois' Code of Professional Conduct for lawyers. While this conduct has always been prohibited by law, the ABA's Model Rule holds lawyers to a higher standard which is not dependent upon or limited by statutory or common law claims. The CBA's Board of Managers agreed with the ABA that it's not necessary for a lawyer to violate the law to run afoul of the Rules of Professional Conduct. The proposed new rule broadens the applicability of enforcement for attorneys found to be guilty by the Illinois Supreme Courts Attorney Registration & Disciplinary Commission of discrimination and/or sexual harassment.

CBA President Daniel Kotin testified in support of Model Rule 8.4(g) before the Illinois Supreme Court's Committee on Professional Responsibility on December 16. Mr. Kotin testified that "even though Illinois has an existing rule prohibiting discrimination the proposed new rule makes it clear that discriminatory practices and sexual harassment must not be tolerated in any workplace setting including the legal profession." Kotin added that the CBA's Board overwhelmingly voted to support the proposed new rule because it is the right thing to do. He expressed concern about other organizations that voted not to support the proposal because it gives the public the wrong impression and makes the entire legal profession look bad. Kotin said: "How can we as lawyers criticize others for harassing and discriminating behavior but seemingly exempt ourselves from similar conduct?"

## WHAT'S YOUR OPINION?

Send your views to the **CBA Record**, 321 South Plymouth Court, Chicago, IL 60604, or [dbeam@chicagobar.org](mailto:dbeam@chicagobar.org). The magazine reserves the right to edit letters prior to publishing.

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# LPMT BITS & BYTES

BY JIM CALLOWAY AND ERNIE SWENSON

## Essential Backup Practices for Your Paperless Office

Everybody appreciates the importance of good backup procedures. But everyone does not implement great backup procedures. Part of the reason is that hard drives today are much more reliable than those of the few generations ago. But the main reason is that because we are all so busy, it is easy for a backup procedure involving a lawyer or law firm staff to be overlooked or delayed. A convincing argument can be made that good backup receipt procedures are not only a requirement of running a business today, but also an ethical requirement for lawyers. The need for a firm to appropriate backup to protect client data is implied in RPC 1.1, 1.3, and 1.4. We are both strong believers in the need for a paperless office and digital workflows. Many lawyers making the transition to paperless today still keep a duplicate paper client file, but there are significant downsides in using a paper file as a backup. These range from the tendency of lawyers to revert to using the paper file and failing to update the digital file to a lawyer relying on paper file at the last minute only to discover that the law

firm's reliance on paperless processes means that the paper file has not been updated and is missing important documents or notes. Our profession is in a transition from reliance on paper client files and other physical information storage systems to a complete reliance on digital client files and paperless workflow. An important part of making that transition is absolute rock hard certainty that you will always have access to your digital information when you need it. This means that no law firm should have its future and its client matters protected by only one form of backup. It also means that lawyers and staff should be trained on how to cope with a data loss, temporary inaccessibility of data, loss of power or loss of Internet access. Lawyers must be trained on how to react in the event of such an emergency (otherwise you run the risk that a panicked lawyer may fail to recognize that his or her phone or tablet powered by a different Internet service provider can serve as a redundant form of Internet access, for example).

### Backing Up Local Data to the Cloud

When it comes to backups, there is a rigid mantra that all savvy computer consultants know by heart: the only truly reliable backup is an offsite backup. In other words, while it's nice to have a backup that you make from your computer to an external hard drive, that's not truly secure. Why? Well, because whatever physical catastrophe can happen to your local computer will probably affect the local backup as well. Here are some examples: Fire in your office; Tornado that hits your office building; Flood that fills your office with standing water; Theft of your computer equipment. People tend not to think about the theft example, but it hap-

pens. Filmmaker Francis Ford Coppola had his computer stolen which had 15 years worth of his movie scripts. He had a local backup on an external hard drive. But when the thieves took his computer, they also stole his external hard drive. So, again, you want a backup that sends your data offsite so that local catastrophes don't affect the backup. In the old days, having an "offsite backup" meant doing a nightly backup and then physically transporting the backup tapes to another location. This took time, was cumbersome, and only allowed for nightly backups to be taken offsite. If a disaster happened during the day, all of the new data was going to be lost. Plus if the individual who is transporting the hard drive home loses the drive or has their car stolen, you may find yourself in the position of having to notify all of your clients that there's been a potential data exposure of their confidential information. Today, the solution is to use a cloud-based backup service that continuously backs up data as it is being created: immediately and reliably. These services are very affordable, and are the easiest way to reliably backup local data in a way that provides incredible peace of mind. Among the services that provide these services are: Carbonite; Backblaze; Crashplan; SpiderOakOne. These services work with any kind of computer—Mac or PC. If you find a service that doesn't work with both types of computer then consider that a bad sign. The whole point of cloud backup services is to make life easy and if you have to start thinking about what kind of computer you can buy to make them work, then life isn't going to be as easy. Some of the online backup services also offer syncing across to other computers. Crashplan offers such services, and so you might want to consider if you not only need backup, but also real time syncing to other computers. The prices for basic online backup (without syncing) vary slightly, or greatly depending on add-on features you select, but in general expect to pay in the range of \$5 to \$12 per month for "personal level" features. Most of these services offer a free trial period so you can investigate how they work and decide which one is best for your purposes. These services offer business class backup, as well

*Jim Calloway is the Director of the Law Office Management Assistance Program at the Oklahoma Bar Association. Ernest Svenson is a lawyer and founder of The Paperless Chase. Visit [www.chicagobar.org/lpmt](http://www.chicagobar.org/lpmt) for articles, how-to videos, upcoming training and CLE, services, and more.*

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personal backup. Maybe you can get away with using the lower-cost personal services, but in general you want to use the business class service if you can afford it. One feature that the business class services typically provide is centralized administration, which will allow you to be in control of backups happening on the various computers that everyone in your firm is using. You don't want to have to rely on going around to each computer and physically checking to see if backups are occurring, or to tweak settings if that becomes necessary. And with the business class services you can even backup your local servers if you have that need.

### How Many Belts Go With Your Suspenders?

In conclusion, this is really the ultimate question, even if it is worded colloquially. You have a set of data on your computer and your computer network. You understand that you need at least one additional copy of the data, the proverbial data backup. It is our experience that this functions much better when done on automated, online process rather than relying for an individual in a busy law firm to do it manually. But then what? Just making an image of your computer and save it

*continued on page 48*

# NOTA BENE

BY KATHLEEN DILLON NARKO

## They and Ze: the Power of Pronouns

**H**ow we write reflects how society treats groups. Our language has changed to incorporate the presence of women without noting their marital status. A new change is upon us to include persons who consider themselves gender neutral. Using “ze” or the singular they as pronouns is gaining popularity and acceptance. Language is always changing—even in the traditional realm of legal communication.

### History of Gender Expansion

In the 1970s and ‘80s, the collective “he” became unacceptable as a pronoun representing both men and women. Abraham Lincoln famously said, “A lawyer’s time and advice are his stock in trade.” Today, when 50% of law school classes are women, the collective “he” is not inclusive. To avoid sexism, “he” became “he or she.” “A lawyer’s time and advice are his or her stock in trade.” While “he or she” can become cumbersome at times, few would argue we should eliminate she from the equation. Similarly, the move to Ms. from Miss and Mrs. had its detractors.

### Ze and the Singular They

More recently, persons have chosen to use “ze” or they as a singular pronoun because it avoids the gender binary of he or she. Many members of the transgender and genderqueer community favor the singular they or invented pronouns such

as ze and xe. They do not identify with the single gender he or she. “We need a gender-neutral pronoun to reflect this new reality,” says Professor Greg Johnson of Vermont Law School. *Welcome to Our Gender-Neutral Future*, 42 Vermont Bar Journal 36 (Fall 2016). Johnson explains, “Genderqueer is an umbrella term for those who are gender non-conforming, or who are gender fluid (moving from one gender to another), or who do not identify with any gender.” *Id.*

Some may wonder if a world of ze and they for a singular subject (e.g., Pat picked up their book) is indeed a new reality. In January 2016, the American Dialect Society chose as its Word of the Year “they—gender-neutral singular pronoun for a known person, particularly as a nonbinary identifier.” Colleges across the country address gender neutral pronouns in websites devoted to diversity, inclusion, and LGBTQ issues. The University of Vermont allows students to identify themselves as a third gender—neutral.

My informal poll of students in undergraduate and graduate programs shows most are familiar with the singular they, ze, xe, or some of the many other invented pronouns. Classes and meetings may begin with participants stating their names and preferred pronouns. I might say, “My name is Kathleen, and I prefer the pronouns she/her/hers.” Another person might prefer a gender-neutral pronoun and say, “My name is Terry, and I prefer the pronouns they/them/their.” Someone in the class may refer to something Terry says in class, stating “I agree with their point.” In another example, a woman in a masters program in the healthcare field told me she had been trained to introduce herself to patients by stating her first name and preferred pronouns.

If you have not heard of ze, xe, or the singular they, you are not alone. I reached out to a few of my former students, who graduated eight years ago. Two are practicing with law firms, and one is in-house counsel with a technology company. None of them had heard of ze, xe, or the singular they as gender-neutral pronouns. Also, none of them had ever been asked about their preferred pronouns. This suggests the nascent stage of gender-neutral pronouns.

Even though the concept or words are new to many, gender-neutral pronouns have some strong supporters. The Washington Post has amended its style guidelines to allow the singular use of they as a pronoun, upon request. Even the New York Times has used the title, Mx., a gender-neutral form of Ms. and Mr., at the request of an interview subject.

### How This Affects Our Writing

In 2010, I wrote a column on language change. *To Split, or Not to Split: Judges Posner, Rovner, and Wood Weigh in on Language Change*, 24 CBA Record 60 (Oct. 2010). I noted that language changes constantly, and linguists view rules of grammar as conventions, which loosen over time. Nonetheless, I came down on the side of traditional rules of grammar—at least when writing to court:

As the differing views of the three judges above show, some judges may find clear writing only within strict grammar rules. Others may have a more flexible approach. Linguist Cameron supports taking the conventional route, stating, “You may be shooting yourself in the foot if you contradict the expectations of your audience.”

I counsel attorneys and students to write conservatively, that is, to follow the traditional rules of grammar. A brief writer does not want his or her style to interfere with a judge’s reading of the brief. Do not let your arguments take a back seat to whether you split an infinitive. Judge Rovner agrees and sums it up succinctly, “How can you ever be wrong by doing it right?”

I still stick to that advice for formal briefs—at least for now.

*Kathleen Dillon Narko is a Clinical Professor of Law at Northwestern Pritzker School of Law and a member of the CBA Record Editorial Board*

*continued on page 52*





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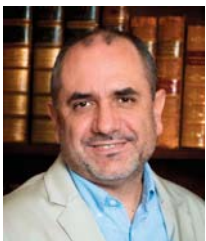
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### LPMT continued from page 43

periodically makes sense? Should you get a portable hard drive and manually make an additional copy of the backup from time to time? Should you get two of those portable hard drives so that one can always be stored off-site? At some level, this is still a matter for each individual lawyer or law firm to decide. But, it is also fair to say at this point that having no backup is not a rational and responsible decision for your clients for your law practice. ■

### Nota Bene continued from page 48

My advice may be different in the not-too-distant future. A generational change is afoot. All of us should consider changes in how we use pronouns. Professor Johnson raised interesting points via email:

What happens when the students who use they as a singular pronoun as an "instrument of social or linguistic change" become law clerks? I am sure some law clerks feel this way now with many more to follow. How does the argument about knowing your audience play out then? In time, partners at firms, managing attorneys at NGOs, and even judges

### YLS Chair continued from page 36

force, fraud, or coercion. Additionally, the same federal statute does not require proof that either the trafficker or the victim traveled to different states or even internationally. Some examples of sex traffickers who exert physical or psychological control over a victim can include, but are not limited to, a boyfriend, an employer or even a parent.

The exact amount of child victims of sex trafficking in the U.S. is unknown. In 2005, however, the FBI designated Chicago as one of thirteen locations of "High Intensity Child Prostitution." In Chicago, approximately 16,000-25,000 women and girls are involved in the commercial sex trade industry on an annual basis. Within this group, 33% of these women and girls are first introduced into prostitution by the age of 15 and 62% by the age of 18. Between 2007 and 2015, the National Human Trafficking Resource Center hotline received 14,588 reports of sex trafficking in the U.S. In 2014, The Department of Justice's Human Trafficking Reporting System reported 2,515 investigations of human trafficking between January 1, 2008 and June 30, 2010. Of those 2,515 investigations, 82% were classified as sex trafficking and within that 82%, 83% involved U.S. citizen victims and 40% involved prostitution or sexual exploitation of a child. The National Center for

Missing and Exploited Children reported roughly 1 out of 6 endangered runaways were likely child sex trafficking victims. The International Labor Organization estimates that there are 4.5 million people globally trapped in sex trafficking.

Human trafficking of minors is a significant problem globally and within the U.S. Steps need to be taken to help people identify, intervene with, and support people who are susceptible to trafficking or who have been trafficked. Studies have shown that youth who are trafficked in the sex trade industry are likely to be directly or indirectly involved with either the adult or juvenile justice system. Additionally, research has also shown that these same youth often times have complex trauma reactions, post traumatic stress disorders, damaged sense of self, compromised interpersonal boundaries, trust issues, anxiety, depression, and substance abuse issues.

There needs to be more discussion on this topic to raise awareness for these individuals and to create help and change to trafficked youth. I hope you can join us during the CBA's Human Trafficking Awareness Week. ■

will use they as a singular pronoun to create social change. This audience will find "his or her" (or his/her; s/he, or any other gendered alternative) positively archaic and retrograde—revealing the author's politics in an unflattering manner. . . . Maybe we should be on the right side of history on this one.

Not so long ago, women faced fierce resistance changing language from the collective "he" to "he or she." Now it is the accepted rule. Language—especially from lawyers—should not be sexist. Likewise, language should not exclude another segment of our population. We appear to be facing a new shift in language. Many

proponents of gender-neutral pronouns stress we should respect those who do not identify with binary gender. Language is a good place to start. ■

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