APRIL/MAY 2015

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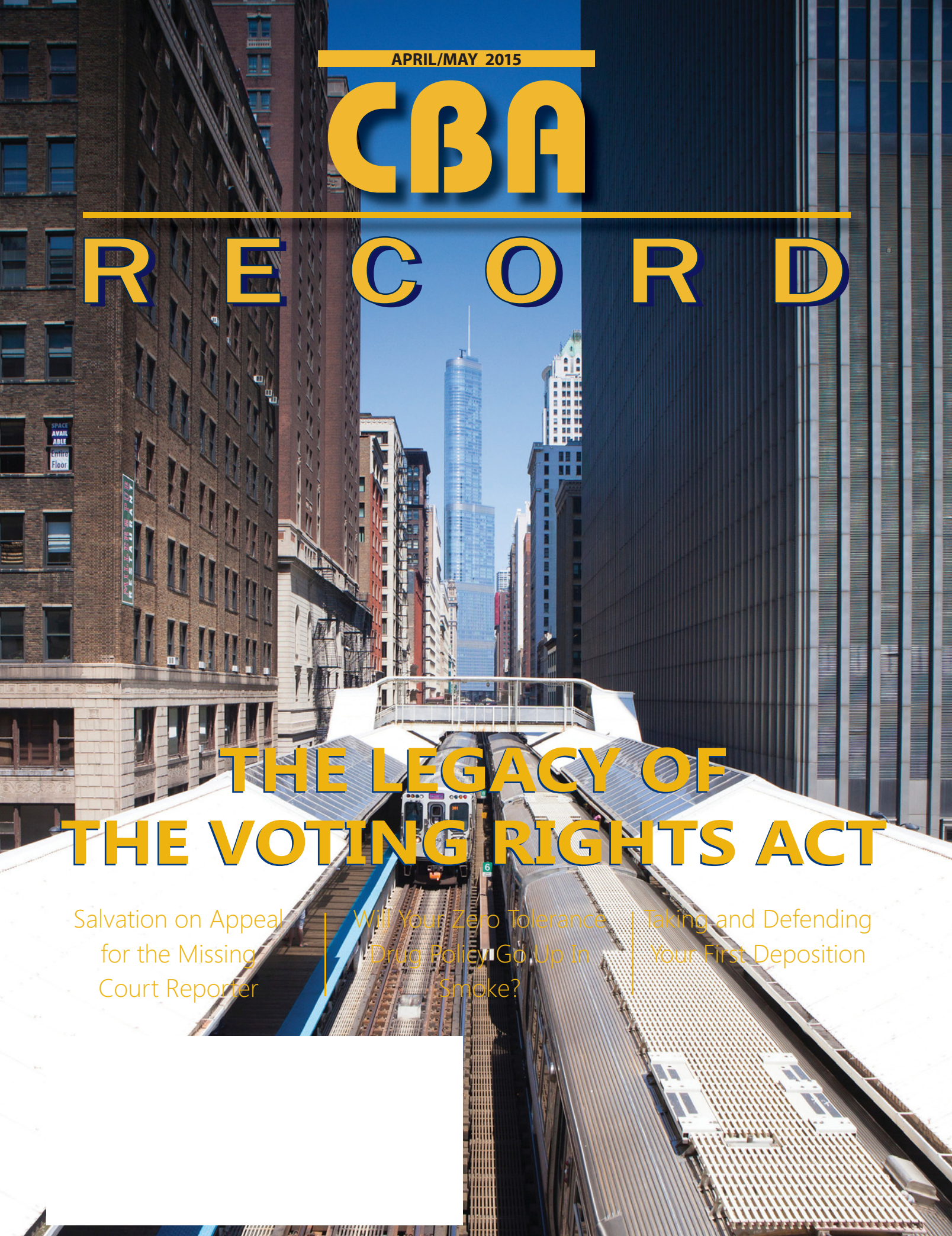

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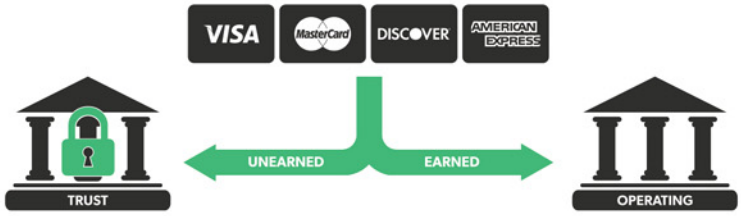

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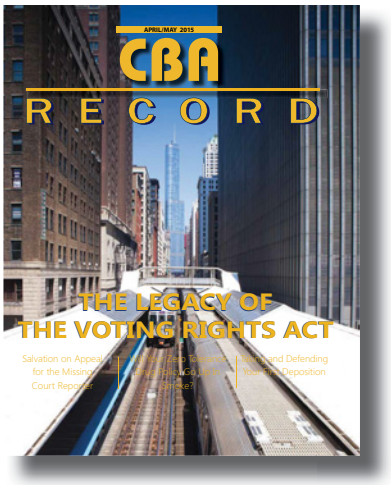

On the Cover
This month's cover art is courtesy of CaptureLight.

PRESIDENT'S PAGE

BY DANIEL A. COTTER

The Memories Will Last Forever

"We are the ones that keep this city moving, We'll be the ones that will send you off to jail, We will dance and we will sing, For the justice that our voice will bring." –6'10, "Da Boss"

"If I have seen further it is by standing on the shoulders of giants." –Sir Isaac Newton

"We keep moving forward, opening new doors, and doing new things, because we're curious and curiosity keeps leading us down new paths." –Walt Disney

"And bad mistakes–I've made a few." –Queen, "We Are The Champions"

This is my final column as your President. At the beginning of the bar year, we talked about the year of the young lawyer and a year of service to the bar. We have tried to remain consistently focused on those issues throughout the year, and with various committees and the YLS, we have done much. The problems of the profession for young lawyers will continue, but the CBA and YLS are committed to continuing to find relevant programs and offerings to help tackle the issues we as a profession face. Paul Ochmanek and the incoming leadership of our YLS will continue to address these issues and I commend them for the work they do.

We truly are the ones that keep this city moving and our leadership and influence is felt throughout. From our TV Committee taping its "You and the Law" program to the WYCC interviews we film, from the Traffic Court video Judge Tom Mulroy shot for the public this bar year to the Commercial Calendar mandatory arbitration program, from the JEC evaluations to the work of the Legsislative Committee, we are integral parts of the fabric of our community. To all of our members, I thank you for committing time to not only the betterment of our profession, but the betterment of the community.

This year has been an extremely busy one for me, but is one I will remember fondly for the rest of my career and life. If one visits the listing of Past CBA Presidents at http://www.chicagobar.org or visits Presidents Hall at the CBA Building, it is humbling to be given stewardship of the best bar association in the country for one year. The list of past presidents is one of true giants from Chicago's legal history, and I am honored to soon join this group. Each of the past presidents has been a mentor and friend to me and I can never expunge the "pay it forward" debt I have incurred. I truly have stood on the shoulders of giants. Thank you for your devotion to the world's greatest bar association.

50th Anniversary Celebration of the Civil and Voting Rights Acts

The CBA celebrated the 50th anniversaries of both the Civil and Voting Rights Acts on Thursday, April 30 at The Standard Club. Rev. Dr. Otis Moss, Mrs. Juanita Abernathy, Hon. Martha A. Mills, and Mrs. Lynda Johnson Robb, were honored at the event as "Keepers of the Flame." In addition, as part of its celebration, the CBA hosted a television town hall with guests Rev. Dr. Otis Moss and Mrs. Juanita Abernathy at WYCC (PBS) Channel 20. Local newswoman Renee Ferguson acted as moderator and the guests were joined by students from City Colleges, Leo High School and students from John Marshall Law School. Photos by Bill Richert.

PLYMOUTH PERSPECTIVES

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

In addition to that group, the CBA is the preeminent association because of its incredible team, led by Executive Director Terry Murphy. Happy 30th anniversary to Terry as ED! It is an honor to be able to work so closely with such a fine man and leader. Assistant Executive Director Beth McMeen and the other 40 CBA employees are amazingly talented and I am grateful for their support and friendship to me. As I noted in Spain, the CBA is truly a family.

In addition to the various programs and events during each bar year, this bar year we had a number of other special events. In September, Justice Ruth Bader Ginsburg was interviewed by Judge Ann Claire Williams and later in the month, Justice John Paul Stevens (ret.) was present for the luncheon in his honor. (He will be present on June 8 for a town hall and hope you will join me then.) We implemented a Leadership Development Program, held a "Pitfalls in International Transactions" Seminar and implemented Open Mentoring. We capped off a busy April with the 50th Anniversary Gala Celebration of the Civil Rights/Voting Rights Act.

If anything did not go as planned, it is on me. No organization can be perfect, but some can be close. Any complaints, see the President. We have strived valiantly to fulfill our commitment to be focused on serving you as members. Thank you for allowing me the privilege. And a big thank you to my wife of 25 years, Ann, and to my sons, John and Tim, thank you for understanding and allowing me to do this. I am the luckiest man alive to have you as a family.

To my friend, Pat Holmes, congratulations again and I look forward to an amazing bar year. If you need anything, you know where to find me. To Pat's family, thank you for sharing her with the CBA. It is a huge time commitment and time with the family will be scarce, but the 22,000 members of the finest bar association appreciate it more than words can say.

In closing, I hope you will agree this bar year, to quote Frank Sinatra's classic song title, "It Was A Very Good Year." Thank you for the privilege of allowing me to serve as your President. It is an experience that I will always cherish. I look forward to the work ahead and to seeing the amazing bar year we have ahead under my friend, Pat. ■

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2015 Vanguard Awards Honor Diversity Champions

By David M. Beam
Publications Director

The Chicago Bar Association was proud to co-host the 2015 Vanguard Awards Luncheon on April 2 at the Standard Club with several local bar associations. The Vanguard Awards honor "the institutions and lawyers who have made the law and the legal profession more accessible to and reflective of the community at large."

The Vanguard Awards began with a reception for the honorees at 11:30 a.m., followed by the luncheon in the Grand Ballroom and the presentation of the awards.

The luncheon honored lawyers, judges and institutions that have made the law and the legal profession more accessible to and reflective of the community we serve. Judge **Sharon Johnson Coleman** of the United States District Court, Northern District of Illinois, was the Association's 2015 honoree.

Other 2015 honorees included: **Jim Bennett,** Midwest Regional Director, Lambda Legal, Lesbian and Gay Bar Association of Chicago; **Virginia Martinez,** Illinois Latino Family Commission, Hispanic Lawyers Association of Illinois; **Anne Shaw,** Shaw Legal Services, Asian American Bar Association of Chicago; Justice **John O. Steele,** Ret., Illinois Appellate Court, Cook County Bar Association; and Hon. **Mary Jane Theis,** Illinois Supreme Court, Puerto Rican Bar Association. ■

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April 2015

Dear Member:

My heartfelt thanks to each and every one of you for your membership in The Chicago Bar Association. The Association's continued success lies in the strength, participation and support of our members, and it is only because of you that:

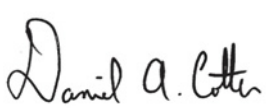
- ✓ The CBA is the leading metropolitan bar association for professional training, continuing legal education programming and member services in the United States.
- ✓ The CBA's 90 general bar and 30 young lawyer committees offer hundreds of cutting edge legal and educational programs, live and online, at no cost to our members. The majority of CBA committee meetings and related legal education programs qualify for Illinois MCLE credit and offer excellent networking opportunities.
- ✓ More than 7,000 members participate in the CBA's CLE*Advantage* program, still only $150 per plan year for unlimited access to hundreds of CLE & LPMT programs (live, webcast and DVD formats).
- ✓ The CBA leads the nation in Law Practice Management & Technology training, which includes an array of how-to seminars, hands-on technology training programs (live and online), and low-cost consulting services for members.
- ✓ The Young Lawyers Section–with more than 9,000 members–continues to be the major source for young lawyer learning, social networking, professional, practice and business development, skills training, community service and leadership opportunities for Chicago-area young lawyers.
- ✓ Coming this year, we'll expand several free member programs, including our "Practice Basics" series featuring leading lawyers and judges, our popular "People You Should Know" speaker series, and practical business and legal skills training, career counseling and more.

I am pleased to report that there will be no dues increase for the 10th consecutive year. The CBA's leadership and staff have worked very hard to keep our administrative costs down. Dues auto pay plan and financial hardship dues are also available options.

Together, we have achieved an outstanding level of programming excellence that enhances professionalism and collegiality among members of the bench and the bar. In addition, our legislative program and recommendations for local, state and federal court rule changes are essential services for all Illinois lawyers.

I encourage you to renew your membership for the coming bar year to continue your savings, benefits, and support of the important work that the CBA does on behalf of the legal profession.

Sincerely,



Daniel A. Cotter
CBA President

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Judge Posner Addresses Common Errors in Social Security Cases

By William A. Zolla II
Editorial Board Member

In a program sponsored by the CBA's Social Security Law Committee, esteemed Judge Richard Posner of the U.S. Court of Appeals for the Seventh Circuit recently addressed a large audience in Corboy Hall about common errors committed by administrative law judges in denying applications for social security disability benefits. Judge Posner has been a frequent critic of the Social Security Administration (SSA) in recent years.

Judge Posner acknowledged that SSA is understaffed and that administrative law judges face significant pressure as a result of enormous caseloads. But Judge Posner believes that judges handling social security cases are making several recurring mistakes in denying claims for benefits, which is leading to frequent reversals of those decisions by the appellate court. In that regard, Judge Posner also criticized federal district court judges for affording too much deference to the decisions of SSA judges.

Judge Posner contends that SSA judges are focusing too heavily on whether claimants can perform the routine activities of daily living, such as housework, instead of whether they are disabled for purposes of holding employment. Judge Posner also believes that SSA judges lack sufficient understanding of the effects of mental illnesses and the multitude of problems arising from morbid obesity, all of which must be considered in evaluating an applicant's medical condition. At the same time, he finds that SSA judges are too often guilty of "playing doctor," despite repeated admonitions against doing so by the appellate courts.

Judge Posner suggests that SSA's problems could be alleviated by hiring more administrative law judges, giving them better training and education, and no longer requiring judges to use boilerplate language in their opinions. ■

The CBA's Legislative Committee meets on the third Thursday of each month. For more information, go to www.chicagobar.org/committees.

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MY EXPERIENCE WITH MEDITATION, MINDFULNESS, AND A RADICALLY DIFFERENT WAY TO WORK WITH STRESS

Sit Down, Shut Up

By Jessica Fayerman

I have been practicing labor and employment litigation for 10 years and have experienced more than my fair share of stress. All professions have their ups and downs. Legal work, however, can have its own stressors. Every day, we have to bring the energy to empathize with clients undergoing major upheavals in their lives. We also have to function while under the pull of constant, conflicting demands from clients, opposing counsel, bosses, judges, and of course, our (often neglected) friends and family. As much as we try to avoid personalizing the legal woes of our clients, that is a constant risk and a huge drain of energy. The fact that we argue with people for a living can be its own unique stressor.

So how do we deal? We have many adaptive mechanisms, some of which are more productive than others. Some of us live for the end of the work day or our next vacation, grasping at whatever we think will be more pleasurable than the practice of law (which, for some of us, is just about anything). The trouble with this "grass is always greener" attitude is that we often find that our work stressors have a habit of following us everywhere we go. The advent of the smart phone certainly doesn't help – it's like we have taken our most needy and annoying client with us on our trip to Hawaii. It's also inevitable that these pleasurable experiences we long for won't last, and this can cause us some further stress. Think about your attitude on a Friday night versus a Sunday night, for an obvious example.

Some of us deal with the stress by dulling out. Modern life offers us so many opportunities just to forget about things. Have you noticed how many people on the train are completely glued to their phones? A llama on a unicycle could roll through the car, and maybe only one person out of 50 would notice. For lawyers, substance abuse is an increasingly common problem as more lawyers seek ways to dull themselves to the stress. Apart from the medical and social drawbacks of excessive substance use, there's one less obvious danger: by dulling out, we miss our lives. We may be "just getting by," but basically, we're just asleep.

It seems as if stress has followed me around like a loyal dog since graduating from law school. In addition to everyday work stress, I have also experienced a divorce, the challenges of being a single parent, and many other personal ups and downs. Many other lawyers have experienced the inevitable cycle of enthusiasm and burn-out, and the instability that can bring. Over the past 10 years, I have also become an expert at misguided adaptation strategies. If it's maladaptive and bad for you, I've done it. I suffered, my family suffered, and my clients suffered. It was not a healthy or enjoyable place to be.

Right in the middle of one of my more ill-advised quests for stress relief, I met another lawyer (and single parent of three) who practiced meditation and mindfulness. Prior to that point, I had never been a "spiritual person," and meditation seemed much too "out there" for me. However, since nothing at all was working in my life, I decided to suspend my disbelief and give it a go. I found a meditation center, received some basic instruction, and sat down and shut up.

The type of meditation I learned and now practice derives from one of the Japanese traditions of Zen and is called "just sitting." We take a specific sitting posture that helps with stillness and stability (which can be easily modified for sitting in a chair), face the wall, and keep our eyes open. Then what? I was surprised to learn that that's basically it.

When we meditate, we're not trying to get from Point A to Point B. Rather, we just sit with whatever arises, without grasping after the "good parts" and pushing away the "bad parts." What arises? Anything. Sights, sounds, smells, sensations. Since we're initially not used to sitting still for a long period of time, we often notice twinges in our knees and back more prominently than other things. We simply notice all of these things and let them fall away on their own, as they inevitably will.

What about thoughts? After we meditate for a while, we notice that thoughts are no different from any other sensation we notice while we sit – they come up, stay for a while, and then fall away. They're a bit like passing weather. When we find ourselves caught up in a train of thought, we simply notice that and return our attention to the here and now. Meditation is not about stopping thought – since that would be impossible anyway – but it *is* about not being caught by thought. As a meditation teacher once said, "don't believe everything you think!"

During meditation, we don't judge ourselves, gauge how "well" we're doing, or question whether we're "doing it right." We don't have goals. Rather, we just rest in non-reactive presence. That's it. A friend once said that meditation involves "giving the ego a busy signal" for a while, and I really like that analogy. We sit with no other purpose than just to sit, even though there is likely something more conventionally pleasurable or "productive" we could be doing.

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Ana Dutra, President and CEO of the Executives' Club of Chicago

Ms. Dutra earned her law degree in Rio de Janeiro, but devoted her career to business. She previously was the CEO of Mandala Global Advisors and held the role of CEO of leadership and talent consulting at Korn/Ferry International. Ms. Dutra will speak about leadership, attitude and relationships.

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CBA SYMPHONY AND CHORUS PRESENT "SOMETHING WONDERFUL" ON APRIL 26

How Do You Get to Orchestra Hall?

By Ruth J. Kaufman
Editorial Board Member

How do you get to Orchestra Hall? Practice, practice, practice! On April 26, the Chicago Bar Association Symphony Orchestra and Chorus combined with the Elgin Master Chorale, national winners of the American Prize in Voice and narrator Harry Porterfield to present *Something Wonderful: The Music of Rodgers & Hammerstein.*

The nearly 300 performers earned a standing ovation for their rousing renditions of 23 songs from Rodgers & Hammerstein musicals including *Oklahoma!, South Pacific, the Sound of Music, Cinderella, Carousel*, and more. One highlight was the audience joining in by enthusiastically participating in an encore of "Do Re Mi" after the soloists taught them hand gestures.

For the CBASO and chorus's second orchestra hall appearance, Maestro David Katz, who has led the CBASO since its inception nearly 30 years ago, says, "We needed a program that would be musically worthwhile, very different from *Carmina [Burana*, the work performed at Orchestra Hall in 2011], likely to attract a large audience, and able to generate enough advertising and sponsorship dollars to make it financially viable. Once I discovered that the entire Rodgers & Hammerstein library was online, and then received permission to create our own concert hand-selected from their complete catalog, "Something Wonderful" was born."

Rebecca Patterson has directed the CBA Chorus since its first performance of *Beethoven's 9th* at Navy Pier in 2006. "I loved prepping this material because the process and the product bring so much pleasure to both singers and audience. The singers' enthusiasm has made our preparation a real delight. There was a lot of energy and focus during rehearsals, and we all found a lot of enjoyment in preparing for this concert."

Symphony members, led by Maestro David Katz, and soloists delighted attendees at the April 26 Concert. Photos by Bill Richert.

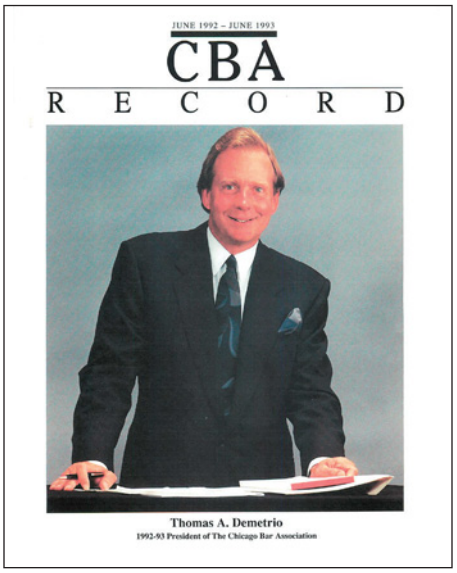
"Being able to advertise nationally for soloists for CBA Symphony & Chorus concerts through the American Prize, as we have for the last several years, has brought to our performances artists of stature who we otherwise would have never known. The process has raised the quality of our performances and the visibility of our unique organization to a national level," says Katz.

Patterson adds, "The music is so well written for the voice that it's a pleasure to sing. For a lot of the chorus members, this music evokes memories of their first experience as singers, often as kids in school. A number of choristers recounted fond memories of a special teacher, who introduced them to music and fostered a love of singing. For so many choristers, the music goes beyond the stories in the song. It carries their own personal stories about this music."

In season, the chorus rehearses weekly at the CBA, while the orchestra rehearses in chambers at the Daley Center. ■

For more information and to learn how to join the CBASO or Chorus, visit www.chicagobar.org

Celebrating 20 Years of Lawyers Lend-A-Hand to Youth



The Lawyers Lend-A-Hand to Youth Program was created 2o years ago by the Chicago Bar Association and the Chicago Bar Foundation. Thomas A. Demetrio funded an annual grant award with a desire to impact the lives of Chicago's underprivileged children by recognizing the efforts of exceptional tutor/mentor programs in the Chicago communities. From this award was born the Lend-A-Hand Program.

Remarks from then-CBA President Demetrio on the inauguration of Lend-A-Hand (**CBA Record,** January 1993) are included below. The need for this inventive program continues today, as do the many wonderful stories of lives that have been impacted through the efforts of Chicago attorneys via Lawyers Lend-A-Hand.

Sharing the Gift of Hope

By Thomas A. Demetrio

The vocation of every man and woman is to serve other people.

–Tolstoy

I am proud to formally announce that The Chicago Bar Association and The Chicago Bar Foundation will commence a mentoring program for our inner-city youth.

What is mentoring, and why is it important to the community? Mentoring programs help children of various ages who are socially isolated from the un-

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20 YEARS
LENDING A HAND TO MENTORING

Co-chairs:

Paula Hudson Holderman
Winston & Strawn LLP

Sharon E. Jones
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Lawyers LEND-A-HAND to youth

CLE & MEMBER NEWS

Renew Your Membership and Receive free CLE Coupons

It's membership renewal time at the CBA! In April, all members received their annual dues statement. As a special incentive for renewing early, if your dues payment is received by May 31, you'll receive free CLE coupons (one free CBA seminar and two free online seminars from West LegalEdcenter, coupon details available at www.chicagobar.org/renew). Renewing is easy: online (www.chicagobar.org), by phone (312/554-2020), by fax (312/554-2054) or by mail. No dues increase for the tenth year in a row!

The CBA is here to help you:

- Save time and money
- Keep pace with legal developments and trending topics
- Start/grow your practice
- Connect with local attorneys & judges
- Meet your MCLE requirement for free
- Enhance your resume
- Prepare for career changes

New benefits include: law firm marketing and business development programs; solo/small firm resource portal; judicial meet and greets; legal news feeds; personalized career counseling; how to's on legal and business software; hands-on technology training for members and their support staff; discounts on Verizon, Staples, Expedia, Kimball Office; and much more. Most of these new benefits are free or very low cost. Visit www.chicagobar.org/renew to see a complete list of what's new at the CBA. We appreciate your past support and look forward to having you join us for another outstanding year. Questions? Contact the CBA's Membership Accounting Department at 312/554-2020 or billing@chicagobar.org ■

Dues Auto Pay Plan Available

Wish you could spread your dues payments throughout the year? Tired of getting monthly invoices from the CBA? Want to save on stamps, envelopes and bill payment time? Looking for free CLE coupons?

If you answered yes to any of these questions, you should sign up for the CBA's Dues Auto Pay Plan which allows you to automatically bill your CBA membership dues to your designated credit card on an annual, semi-annual, quarterly or monthly basis. All we need is your authorization and enrollment form. This is a great way to save time and ease up on your budget. See complete details and enrollment form at www.chicagobar.org, or call 312/554-2020. (Installment plans apply to dues only. CLE Advantage fee, voluntary contributions and monthly membership charges are not included in this option. Automatic charges will begin on June 1.) ■

Free Seminars from West LegalEdcenter

With more than 65 respected CLE providers, the West LegalEdcenter offers hundreds of online CLE programs including CBA and YLS seminars. And now, you can get two free CBA seminars on the West LegalEdcenter by renewing your CBA membership by May 31.

To receive this offer, send in your dues payment by May 31 and include your email address . In June 2015 and January 2016, you will receive an email confirmation from West LegalEdcenter with your free registration information. For more information on the West LegalEdcenter and to see current program listings, visit www.chicagobar.org and click on the CLE tab, then West LegalEdcenter. ■

Important Dues Billing Reminders

- *Annual Dues.* In our ongoing effort to reduce administrative expenses and keep dues at the current level, the CBA has adopted an annual billing cycle.
- *Dues Auto Pay.* Spread your dues payments throughout the year by signing up for the Dues Auto Pay Plan which allows you to pay your dues automatically on a monthly, quarterly, semi-annual or annual basis at no extra cost via automatic credit/debit card charges.
- *Reduced Dues for Financial Hardships.* Unemployed members and those with financial hardships may request our reduced annual dues rate of $50.
- *eStatement.* Receive your CBA bills by email only and save time, postage and the environment.
- *Billing Statement.* The CBA's statement allows you to choose any or all of the above options and add in your own level of contributions to the Bar Foundation Legal Aid Fund and the CBA Building Fund.

If you have any questions regarding your dues statement, email billing@chicaobgar.org or call 312/554-2020. CBA membership is an important investment in your professional and personal growth. We encourage you to renew, thank you for your support and look forward to serving you in the new bar year. Remember to renew by May 31 to receive free CLE coupons.

THE CHICAGO BAR ASSOCIATION

Continuing Legal Education

How To... Marketing for Estate Planning Attorneys
June 9 • 1:45-2:45 p.m. (complimentary)

Families Fleeing Violence: U.S. Response
June 10 • 2:00-5:00 p.m.

Hands-on Training: Create a Website for Your Firm
June 11 • 1:30-4:30 p.m.

Taking and Defending Depositions in State & Federal Court
June 11 • 2:00-5:00 p.m.

Futures & Derivatives
June 12 • 2:00-5:00 p.m.

Making the Most of Your Arbitration
June 15 • 12:00-1:30 p.m.

Social Security Benefits for Persons with Mental Disability
June 16 • 2:00-5:00 p.m.

Hands-on Training: Outlook Calendar
June 17 • 11:00 a.m. - 12:30 p.m.

Reputation Management and Online Reviews
June 18 • 12:00-1:30 p.m.

Federal Court Walk Thru
June 18 • 9:00 a.m. - 12:00 p.m.

Title Insurance in Commercial Real Estate Transactions
June 19 • 2:00-5:00 p.m

How To... Automate Functions in Microsoft Word
June 23 • 1:45-2:45 p.m. (complimentary)

Developing a Client Development Plan
June 23 • 4:00-5:30 p.m.

25th Anniversary of the ADA
July 23 • 3:00-5:00 p.m.

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

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

The Chicago Bar Association

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Chicago Bar Foundation Report

The Chicago Bar Foundation Ensuring access to justice for all

New grant will support innovative solutions for making essential legal help more affordable and accessible

MacArthur Foundation Grant Recognizes Great Potential of Justice Entrepreneurs Project

The John D. and Catherine T. MacArthur Foundation recently awarded the CBF's Justice Entrepreneurs Project (JEP) a two-year, $400,000 grant. The JEP is an incubator for newer lawyers to start innovative, socially conscious law practices in the Chicago area that provide affordable services to low and moderate-income people, a vastly underserved client base. JEP lawyers build sustainable and flexible practices by leveraging technology, offering fixed fees and a la carte services, and maximizing collaboration with clients.

"For too many low and moderate-income people in our communities, legal services are not realistically accessible or affordable in times of need," said MacArthur Program Officer Jeff Ubois. "The partners and supporters the Chicago Bar Foundation has brought together and the early successes of the lawyers in the JEP program offer great potential to develop replicable, market-based models that can help to address more fully this gap in Chicago and across the country."

More information about the CBF's Justice Entrepreneurs Project can be found at **chicagobarfoundation.org/jep**

The JEP borrows principles from successful incubators in the business and technology fields, such as using a competitive selection process and creating a collaborative network among the participants and program partners. The 18-month program provides training, resources, and support to participants in a shared, cost-effective office setting. A strong pro bono service component places participants at partner legal aid organizations, providing much-needed legal services for people in need while also providing JEP lawyers with vital experience and mentoring. The program also leverages existing but previously untapped referral networks.

"The JEP is a cutting-edge response to a growing and very troublesome failure of the consumer market for legal services," said Terri Mascherin, a partner at Jenner & Block LLP and Chair of the JEP Steering Committee. "It marries proven principles from the business and tech startup fields with the latest innovations in legal practice to develop sustainable new models for delivering affordable legal services to low and moderate income people in need."

The CBF contributed more than $250,000 in seed funding along with substantial staffing support to launch the JEP. An impressive array of partner organizations also make the program possible through pro bono and in-kind support worth hundreds of thousands more. Highlights of that in-kind support include the latest law practice management technology, individualized business development coaching from one of the premier consulting firms in that field, and a series of trainings from some of the top experts in the legal field.

The grant was awarded through MacArthur's Discovery Grants program, which funds exceptionally creative or innovative projects with high potential impact, but which do not fit into the Foundation's existing programs and strategies.

"Thanks to a diverse network of top-notch partners and the dedicated and entrepreneurial participating lawyers, the JEP already is making an impact in meeting real community needs and establishing promising new models," said Jesse Ruiz, a Partner at Drinker Biddle & Reath LLP and President of the CBF Board of Directors. "The grant from MacArthur will enable the CBF to complete the critical pilot phase of the program over the next two years, maximizing the impact and replicability of the JEP's successful practice models throughout the country, while setting the program on the path to long-term sustainability here in Chicago." ■

The Chicago Bar Foundation

Ensuring access to justice for all

Investing in Justice Campaign

Justice People Deserve, Not Just What They Can Afford

Everyone deserves equal access to justice.

Chicago's legal community has once again shown great leadership through the CBF Investing in Justice Campaign, making it possible for tens of thousands of people in need to get critical legal assistance. The Campaign has proven that lawyers and other legal professionals can have a huge impact when we come together around this cause, helping build a safer, stronger and more just community for everyone.

Our thanks to 2015 Campaign Chair Brett Hart of United Airlines, Inc., to the Campaign Leadership Team, to the thousands of individuals making personal contributions, and to the more than 150 participating law firms, corporate legal departments and other law-related organizations.

Invest in Justice Today at chicagobarfoundation.org.

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MURPHY'S **LAW**

BY TERRENCE M. MURPHY, CBA EXECUTIVE DIRECTOR

Rev. Dr. Otis Moss, Jr. and Mrs. Juanita Abernathy were guests for an hour-long discussion of the Civil Rights and Voting Rights Acts that will air on Channel 20 (WYCC) at noon on May 24 and repeat at 9:00 p.m. on May 25, and again at 4:00 p.m. on May 31. Longtime Chicago newswoman Renee Ferguson moderated the show. Photo by Bill Richert.

Don't miss the Lawyers Lend-A-Hand to Youth's Annual Spring Dinner on Thursday, May 28, at the Four Seasons Hotel, 120 East Delaware Place. This year's Abraham Lincoln Marovitz honorees are two outstanding lawyers who are well known in Chicago's legal and philanthropic community, **Karen Gatsis Anderson** and **Kimball R. Anderson.** The Andersons are strong supporters of legal and community services. The dinner is co-chaired by **Paula Hudson Holderman** and **Sharon E. Jones.** Join your colleagues from the bench and the bar in honoring the Andersons at this year's LLAH Awards Dinner.

For more information or to make reservations contact **Genita Robinson** at 312/554-2041 or grobinson@lawyerslendahand.org

Young Lawyers Section Annual Meeting

The Association's Award Winning Young Lawyers Section will hold its annual meeting on Wednesday, June 10 at Harry Carey's Italian Steakhouse, 33 W. Kinzie Street in Chicago. A reception for outgoing Chair **Paul Ochmanek,** whose leadership of the Section has been outstanding, and incoming Chair **Matt Passen** will begin at 11:30 a.m., followed by the luncheon at noon. Tickets for the YLS Annual Luncheon are $40 per person or $400 for a table of ten. For more information or to make reservations, go to www.chicagobar.org or contact YLS Administrative Director **Jenni Bertolino** at 312/554-2031 or jbertolino@chicagobar.org.

CBA Annual Meeting

Join your colleagues and friends at The Association's 142nd Annual Business Meeting on Thursday, June 25 at The Standard Club. Outgoing President **Daniel A. Cotter** has had an extraordinary year and has implemented several new programs to strengthen and grow the Association's membership. Dan has also kept the CBA in the national and international spotlight with outstanding joint programs with other Associations, including two very successful programs with the Tokyo and Barcelona Bar Associations. President Cotter will pass the ceremonial Lincoln Gavel to incoming President **Patricia Brown Holmes,** who is a partner and Executive Committee member of Schiff Hardin LLP.

The following officers and new members of the Board of managers will be installed at the Annual Meeting: First Vice-President **Daniel M. Kotin;** Second Vice-President Judge **Thomas R. Mulroy;** Secretary **Jesse H. Ruiz;** and **Treasurer Steven M. Elrod.** For members of the Board of Managers for two year terms: **Ashly I. Boesche;** Judge **Maureen E. Connors; Mary Curry; Matthew T. Jenkins; Eileen M. O'Connor; Nigel F. Telman; Frank G. Tuzzolino** and **Allison L. Wood.**

The Annual Meeting will begin with a reception on the second floor Living Room of the Standard Club at 11:30 a.m., followed by lunch and the business meeting in the Grand Ballroom at noon. Tickets for the Annual Meeting are $65 per person. To reserve your space, contact CBA Events Coordinator **Tamra Drees** at tdrees@chicagobar.org.

An Interview with U.S. Supreme Court Justice John Paul Stevens

U.S. Supreme Court Justice **John Paul Stevens** (retired) will be The Association's honored guest for a special interview in the Pritzker Auditorium at the Harold Washington Library on Tuesday, June 9, at 12:30 p.m. Seventh U.S. Circuit Court of Appeals Judge **Ann Claire Williams** will host this one hour special interview with Justice Stevens focusing on his life and distinguished legal and judicial career. Justice Stevens recently celebrated his 95th Birthday and was the third longest serving justice on the U.S. Supreme Court. Justice Stevens, who is among Chicago's most famous and favorite sons, recently

published a book entitled *Six Amendments: How and Why We Should Change the Constitution.* Don't miss this special program/interview with Justice John Paul Stevens. Admission is free to CBA members; however, seating is limited. Please rsvp to Tamra Drees at 312/554-2057 or tdrees@chicagobar.org

8th Annual State/Federal Judges Seminar

The CBA hosted the 8th Annual State/Federal Judges Seminar on May 19. The seminar featured remarks from Chief Circuit Court of Cook County Judge **Timothy C. Evans** and Chief U.S. District Court Judge **Ruben Castillo. Collins Fitzpatrick,** Circuit Executive for the Seventh U.S. Circuit and **Gretchen Van Dam,** Circuit Librarian for the Seventh Circuit presented a security update focusing on the Judicial Privacy Act, the Internet and Court Staff. Also, Judge **Kevin S. Burke,** District Judge from Hennepin County, Minnesota, spoke on the topic of Enhancing Public Perception of the Courts.

Congratulations

Special thanks to U.S. District Court Judge **Sharon Johnson Coleman** and to **Brenda A. Russell** for co-chairing the Association's 50th Anniversary Celebration of the Civil Rights and Voting Rights Acts…Judge **Robert J. Anderson** succeeds Illinois Appellate Court Justice **Michael B. Hyman** as President of the Illinois Judges Association at the group's annual meeting on June 5 at Loyola University School of Law. Judge **Israel Desireto** becomes IJA's First Vice-President…**Arlene Y. Coleman** succeeds **Celestia L. Mays** as the new President of the Cook County Bar Association at CCBA's 101st Annual Meeting at the Hyatt Regency Chicago on June 12… The Lawyers Trust Fund of Illinois holds its Annual Meeting at Jenner & Block on June 12…Illinois Supreme Court Justice **Lloyd A. Karmeier** received the Lawyers Assistance Programs Josephy R. Bartylak Award…Illinois Appellate Court Justice **Michael B. Hyman** and Circuit Court Judge **Fredrenna M. Lyle** were honored at the Don Hubert Gala sponsored by Hales Franciscan Alumni Association.

Congratulations to Judge **Jorge L.**

HAPPY ANNIVERSARY TO LAWYERS LEND-A-HAND TO YOUTH

During his year as President of the Chicago Bar Association, Thomas A. Demetrio had a vision of the legal profession sharing the gift of hope with underserved youth. Two years later that vision became the "Lend-A-Hand Program," which awarded $46,000 in 1995 to Chicago-area mentoring programs. To date, Lawyers Lend-A-Hand to Youth has awarded over $1.5 million dollars to mentoring programs and positively impacted the lives of thousands of youth.

Lawyers Lend-A-Hand to Youth will celebrate 20 years at its Spring Awards Dinner on Thursday, May 28, 2015, at the Four Seasons Hotel. The Abraham Lincoln Marovitz Philanthropic Award will be presented to Kimball R. Anderson of Winston & Strawn LLP and Karen Gatsis Anderson (pictured above), a couple who personally and professionally personify Tom's vision of sharing hope.

The proceeds from the dinner will further Lawyers Lend-A-Hand's mission of channeling the legal community's resources to promote best practice mentoring and tutoring programs in disadvantaged communities. Donations and sponsorship of the dinner will have a significant impact as Lawyers Lend-A-Hand supports mentoring programs with average budgets less than $75,000 a year, yet each and every program pairs youth with a one-on-one mentor for at least a school year or longer.

Lawyers Lend-A-Hand's work has had an impact over the years. However, Tom's words in laying out a vision for the organization still ring all too true today:

> Throughout our lives, each of us has received a helping hand from at least one person who really cared. My own list is endless. I invite you to join [me and many others] in giving our inner-city youth an opportunity to become the best they can be. These children need our help. I sincerely hope that you will lend them your hand – and your heart. –Thomas A. Demetrio, **CBA Record** (January 1993)

If you want to be a part of this celebratory evening for a worthy cause, tickets ($250 per person) can be purchased and donations made online at www.lawyerslendahand.org. You can also mail a check to Lawyers Lend-A-Hand to Youth, 321 S. Plymouth Court, Suite 700, Chicago, Illinois 60604. Please feel free to contact us or Genita Robinson at Lawyers Lend-A-Hand, 312/554-2041 or grobinson@lawyerslendahand.org, if you have any questions.

The 2015 Host Committee for the dinner includes: Paula Hudson Holderman, Winston & Strawn LLP (CO-Chair); Sharon E. Jones (Co-Chair), Jones Diversity, Inc.; William F. Conlon, Sidley Austin LLP; Eva-Dina Delgado, Peoples Gas; Averil M. Edwards, United Airlines, Inc.; Katelyn D. Geoffrion, Corboy & Demetrio; Samuel Mendenhall, Winston & Strawn LLP; Brian T. Monico, Burke Wise Morrissey Kaveny; Kevin L. Morris, Kirkland & Ellis LLP; Stephen Patton, City of Chicago; Jeannie Romas, Illinois Sports Facilities Authority; Todd Smith, Power Rogers & Smith, P.C.; Sonya Olds Som, Major, Lindsey & Africa.

Alonso on his appointment to the U.S. District Court…**Dan L. Boho,** CBA Secretary and partner at Hinshaw & Culbertson LLP was inducted into the International Academy of Trial Lawyers… Cook County Elder Law Division Presiding Judge **Patricia Banks** and **Claire E. McFarland,** Executive Director of the Elder Law and Wellness Initiative presented at the American Society on Aging's annual conference…**Jennifer Rosato Perea** is the new Dean of DePaul University College of Law…Judge **James F. Holderman** retires from the U.S. District Court on June 1 after a distinguished career of 30 years on the Federal Bench. He will become a mediator and arbitrator with JAMS…CBA Board of Managers member **Mary Curry** has joined Polsinelli's Labor and Employment Group (Polsinelli is one of the nation's fasted growing law firms)… **Ruth Ann Schmitt** has retired at Executive Director of the Lawyers Trust Fund of Illinois. Schmitt began her legal career as a staff attorney at Chicago Volunteer Legal Services Foundation, and served her entire career in Legal Services…**Mark R. Marquardt** was appointed to succeed Schmitt as the Lawyer's Trust Fund of Illinois' new Executive Director…**Michele M. Jochner** has been elected to serve as secretary of the Minimum Continuing Legal Education Board of the Illinois Supreme Court… **Kimbeth Wehrli Judge** has published a novel, *The FlipSide*…**Mike Leech,** President and **Bob Berliner** organized another outstanding program for Settlement Week…the Illinois Supreme Court Historic Preservation Committee spotlighted Illinois Supreme Court decisions at the turn of the 20th Century prohibiting segregation in Illinois public schools in an April Symposium.

CBA Past President **Laurel G. Bellows,** U.S. District Court Judge **Mary Kendall,** and CBA Past President and Cook County State's Attorney **Anita M. Alvarez** were recently honored by the Lake County YWCA…**Stephanie Scharf** of Scharf Banks Marmor LLC received the Alliance For Women's Founder's Award, and **Megan Mathias** of Lopp Mathias Law Group received the Alliance's Alta May Hulett Award…CBA Board of Managers Member **Erin E. Kelly** received the Chicago Chapter of the Federal Bar Association's Award for Excellence in Pro Bono Service… CBA Board of Managers **Member Justin L. Heather** has been appointed Deputy Director, General Counsel, and Chief Ethics Officer for the Illinois Department of Commerce and Economic Opportunity…**Mary Smith** has been named by the Lawyers of Color to the Fourth Annual Power List Issue.

John C. Sciaccotta is a new partner at Aronberg Goldgehn…**Rebecca S. Eisner** will become partner-in-charge of Mayer, Brown LLP…Chicago firms Kirkland & Ellis and Seyfarth Shaw participated in the American Legal Industry Sustainability Standard (ALISS) pilot for the Law Firm Sustainability Network…**William B. Sullivan** was recently appointed to the Circuit Court of Cook County's Eleventh Judicial Subcircuit…**Miguel A. Ruiz** has joined Cogan & Power as a partner…**Richard L. Theis** received the Abraham Lincoln Association's Lincoln the Lawyer Award… **Kenneth H. Levinson** was a featured speaker at the American association for Justice…**Matthew T. Jenkins,** Corboy & Demetrio, P.C., moderated the "Top Ten Rainmaker Best Practices"…**Lisa M. Lukaszewski** has become associate counsel at Neal, Gerber & Eisenberg LLP… **Paul E. Amberg** and **Ryan H. Vann** have become partners at Baker & McKenzie, LLP…Sidley Austin, LLP has received The People's Resource Center's Beloved Community Award…**William J. Serritella, Jr.** has become a partner at Taft Stettinius & Hollister, LLP…**Gerald J. Bekkerman** was a featured speaker at the ABA's Seventh Circuit spring meeting… **Jeffry M. Henderson** and **Harris L. Kay** have become shareholders at Greenberg & Traurig LLP's Chicago office, and **Douglas M. Grom** joined the firms practice group…**Melanie I. Stewart** has become an Associate at Jackson, Lewis, P.C…**John J. Conroy, Jr.,** former Chair of Baker & McKenzie, LLP will lead the Board of the Midtown Educational Foundation.

Jasmine V. Hernandez is the President of the Filipino American Lawyers Association of Chicago…**Benjamin P. Beringer** is a new partner at Cray, Huber, Horstman, Heil & VanAusdal LLC…**Christine S. Bolger** is a new partner at Firsel, Ross… **Mitchell P. Morinee** has become a shareholder at Segal McCambridge, Singer & Mahoney, Ltd., and **Marcus R. Morrow, Nicole J. Nystrom, Sara R. Strom** and **Erin M. Mayer** have become associates at the firm…**Andrea S. Kramer,** partner at McDermott, Will & Emery, LLP, and **Reena R. Bajowala,** partner at Jenner & Block LLP, were named 2015 Chicago Pow Award honorees by Womenetics… **Jennifer L. Dlugosz** is a new associate at Husch, Blackwell, LLP…**Ellen E. McLaughlin,** Seyfarth, Shaw, LLP and **Jeffrey S. Nowak,** Franczek, Radelet, P.C. were keynote speakers at the National Employment Law Institute's 25th annual Americans with Disability Act and Family Medical Leave Act compliance update program…**Christopher J. Townsend,** partner at Quarles & Brady LLP, received Lexology's Client Choice Award…**Jordan D. Shea** has become a partner at Williams, Montgomery & John, Ltd.…**Martin A. Dolan** has been appointed to the Illinois Secretary of State's Advisory Council on Traffic Safety…**Korina Sanchez** has become an associate at Brenner, Monroe, Scott & Anderson Ltd.…**Sandra A. Franco** has become a partner at Arnstein & Lehr, LLP…**Maja C. Eaton** and **Thomas D. Rein** were named to Sidley Austin LLP's Executive Committee… Quarles & Brady LLP associate **Cameron E. Robinson** has been appointed to the International Association of Privacy Professionals Young Privacy Professionals Board…**Katherine Fritzi Getz** is a new associate at Barack, Ferrazzano, Kirschbaum & Nagelberg LLP…**Kathryn M. Doi** is a new partner at Daley, Mohan, Groble, P.C.…**Colin P. Gainer** and **Darren P. Grady** have become partners at SmithAmundsen LLC…**Justin M. Newman** was named a partner at Thompson, Coburn LLP, and **Jeffrey A. Merar** has become an associate…**David G. Weldon** has become an associate at Neal Gerber & Eisenberg LLP…**Bernard F. Doyle, Jr.,** and **William J. Bolotin** are partners at Funkhouser, Vegosen, Liebman & Dunn, Ltd.…**Cari Grieb** has become

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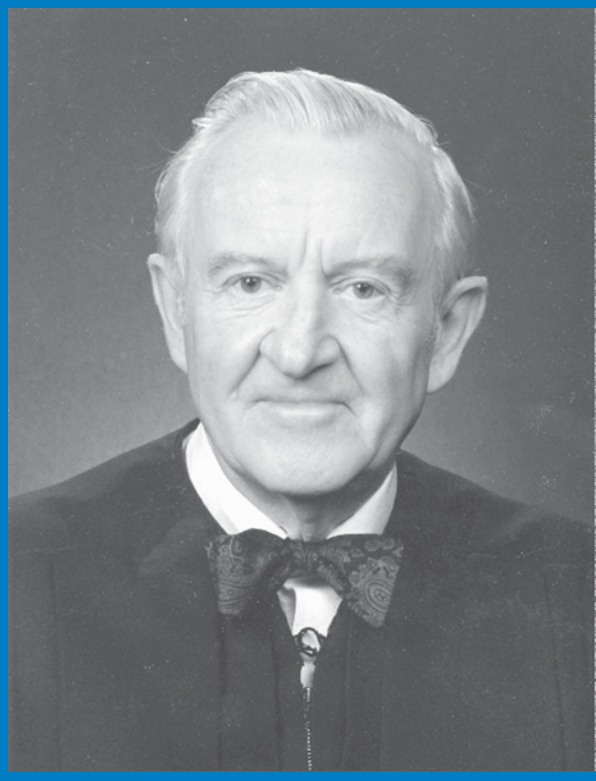
Join Your Colleagues from the Bench and the Bar
for a Conversation with

Justice John Paul Stevens (Ret.)

United States Supreme Court

7th U.S. Circuit Court of Appeals Judge Ann Claire Williams will host this one hour special interview with Justice Stevens focusing on his life and distinguished legal and judicial career. Justice John Paul Stevens recently celebrated his 95th birthday and was the third longest serving justice on the U.S. Supreme Court. Justice Stevens most recent books include: "Five Chiefs," a compendium of memories of each Chief Justice he served with, from Fred Vinson through John Roberts, and "Six Amendments: How and Why We Should Change the Constitution."



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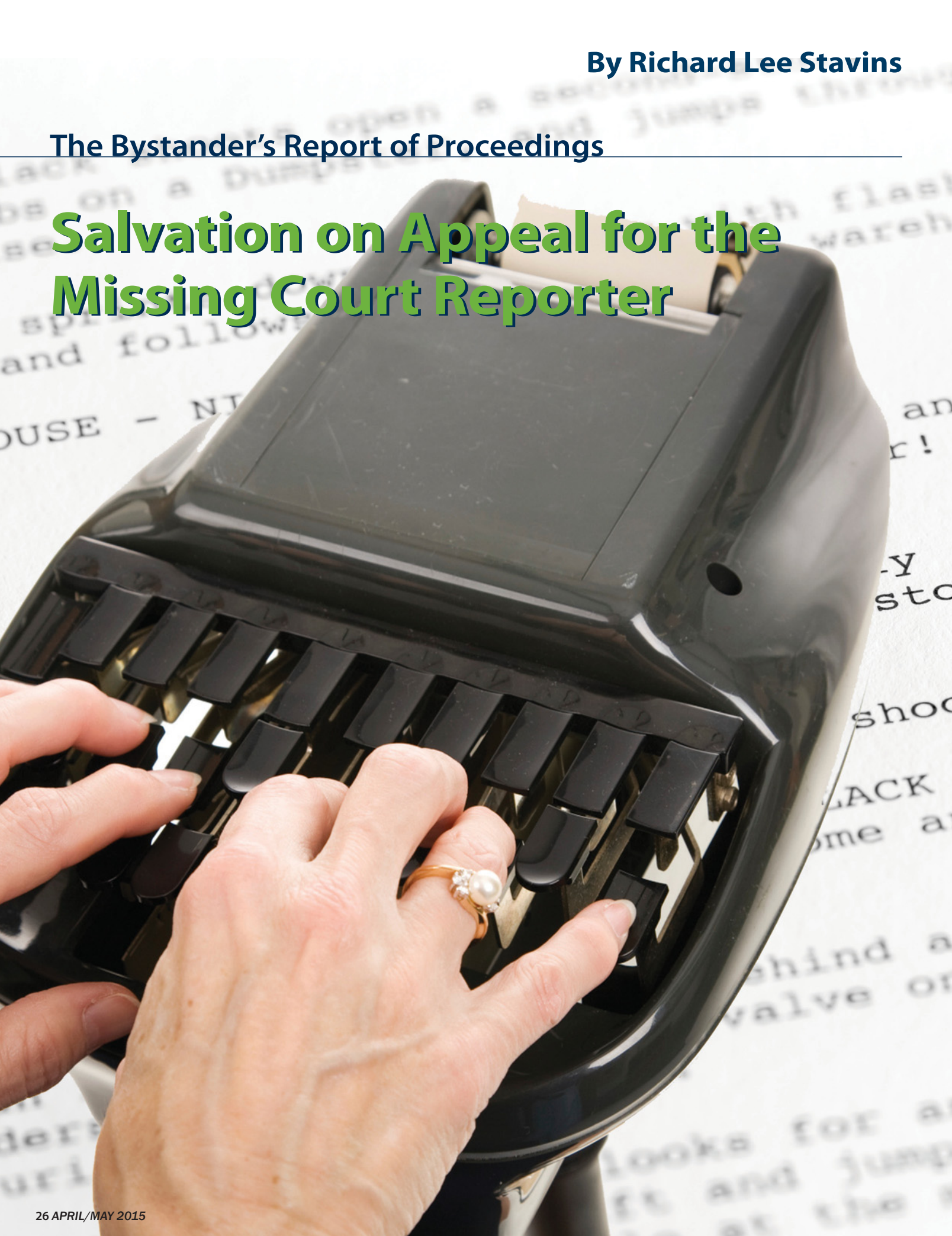
By Richard Lee Stavins

The Bystander's Report of Proceedings

Salvation on Appeal for the Missing Court Reporter



Without a trial transcript, an appeal after a trial is a sure loser. So what does appellant's attorney do if there was no court reporter at the trial? Here's the solution.

DESPITE YOUR BRILLIANCE YOU LOST THAT SIMPLE one day trial, but there was so much error throughout the trial that you tell the client a reversal on appeal is in the cards. The client tells you how outraged she is over the judge's repeated mistakes and authorizes an appeal. She sends you the necessary retainer. You file the notice of appeal and tell the client that things are progressing well. What could go wrong? Plenty.

You suddenly remember that no one hired a court reporter for this trial. There wasn't that much at stake, and it was only for one day. So, you saved the attendance fee. Good for you, tightwad. Or, you were in an unfamiliar courthouse where you thought there was an in-house audio taping system in effect, but it turns out there wasn't.

As you begin working on the appeal you learn that an appellant claiming error at trial must have a trial transcript (a report of proceedings, in the jargon of Illinois appellate practice) or no reversal is possible. Every appellant has a strict burden to include in the record on appeal everything necessary for the issues to be reviewed, and a lack of a report of proceedings of the trial requires the reviewing court to affirm. *Passero v Allstate Insurance Co.,* 196 Ill.App.3d 602, 607, 554 N.E.2d 384, 387-88 (1st Dist. 1990). No court reporter means no transcript, which means no mandatory report of proceedings, which means no chance of a reversal, which means you may need to refund the retainer and notify your malpractice carrier. For want of a nail, the kingdom may be lost. Or is it?

There is salvation. It comes in the form of a device created by Supreme Court Rule 323(d): the bystander's report of proceedings. Get down on your knees and give thanks to the Supreme Court of Illinois for anticipating your nightmare and providing a solution. Rule 323(d) is premised on the principle that appellate review should not be stymied because some dopey lawyer (that's a euphemism for you) failed to have a court reporter in attendance.

Creation of the bystander's report of proceedings

The rule directs the appellant to begin the process by preparing a proposed bystander's report of proceedings from "the best available sources, including recollection." Absent some recording device or access to extremely detailed judicial trial notes–both rarities–recollection is often the *only* available source. Good trial lawyers engaged in the heat of combat are generally not good note takers during the trial. On the other hand, in that rare situation where the courthouse actually has some kind of recording of the trial, the recording must be produced for the parties. If there were transcribed depositions in the case, those transcripts may be considered a source, on the theory that witnesses generally testify consistently with their deposition testimony.

Within 28 days after the appellant filed her notice of appeal, her proposed bystander's report of proceedings must be served on all parties. It is not to be filed with the court, only served. For a comfort level, appellant might want to file a one page proof of service attesting to the fact that the instrument was served on a date within the 28 days.

Within 14 days after service of appellant's proposed report of proceedings, appellee must serve his proposed changes, unless he agrees with everything appellant proposed. Appellee's proposed changes may be in the form of amendments or his own separate proposed bystander's report of proceedings. Within the next seven days after that, the disputes between the appellant and appellee are to be submitted to the trial judge. Counsel should confer and attempt to work out their differences, to narrow what the judge must decide.

The trial judge is directed by 323(d) to resolve the disputes as to the content of the report of proceedings, and may hold hearings if necessary. The judge is to enter an order promptly that resolves the disputes. The parties are then to prepare one final version of the bystander's report of proceedings in accordance with the judge's ruling, and the judge is to certify that instrument as accurate. That version, and that version alone, is to be filed–unless the parties stipulate otherwise.

The prior proposed versions of the report of proceedings that are not certified are essentially of no import. The Appellate Court will take the certified version as true and correct as if it were a verbatim report prepared and certified by a court reporter under

Rule 323(b). The reviewing court is really not interested in reviewing the dispute about what the witnesses testified.

The three deadlines in 323(d)–28 and 14 and 7–aggregate 49 days, which is the exact deadline for the filing of a court reported verbatim report of proceedings. S.Ct. Rule 323(b). If the deadlines in 323(d) cannot be met–which is often true–extensions may be requested from the Appellate Court. S.Ct. Rule 323(e). Be careful: there are deadlines in 323(e) for requesting extensions. If they are not met, a request for an extension should be sought under Rule 183. In either event, the Appellate Court generally will liberally grant extensions, provided that good cause is shown by affidavit.

Time is of the essence for appellant

Counsel for the appellant can never be sure whether appellee's counsel–who may be someone new stepping into the case solely for the appeal–will be a choir boy or a storm trooper on the issue of the content of the bystander's report of proceedings. Prudence dictates that the appellant assume the latter will be more likely. That means that there will be a dispute about what the witnesses actually testified that is going to have to be resolved by a trial judge who probably hears dozens of motions and several trials every week and probably will have little or no recollection of your particular trial that he heard several months prior. The trial judge may or may not have good trial notes. The probability is overwhelming, of course, that the notes will be far from a verbatim recitation of what each witness said. The judge is not a certified shorthand reporter. Also, there's always the unlikely but forseeable possibility of judicial retirement or demise in the interim.

Therefore, appellant's counsel will want to bring the dispute on the content of the report of proceedings before the judge for ruling as quickly as possible. If the trial was non-jury–so that a post-trial motion is not mandatory–strong consideration should be given to foregoing a motion to reconsider. Those motions always result in months of briefing and are nearly always denied. Appellant should file the notice of appeal immediately after the judgment is entered, and deliver, not mail, the proposed bystander's report of proceedings to appellee's counsel immediately after that. Don't delay. If a judge can't remember the testimony, is he likely to give the benefit of the doubt to the side that wants to reverse him?

Format for the bystander's report of proceedings

There is no prescribed format for a bystander's report of proceedings. The best practice is to follow the style used by court reporters in preparing their verbatim report of proceedings pursuant to Rule 323(a), except that it is not necessary for the testimony to be in oral interrogatory (question and answer) form. Narrative form is acceptable, and indeed may be preferred. The trial court caption, not the reviewing court caption, should be used. If you have never seen a court reporter's verbatim report of proceedings of a trial, get one, study it, and make the format of your bystander's report of proceeding as close to that style as possible. Remember, it was a trial, not a deposition.

The appellant–who has the burden of proof on appeal–should make every effort to make the bystander's report of proceedings as thorough and complete as possible, particularly when it comes to the testimony on anything that is going to be raised as error on appeal. A sketchy report of proceedings will not instill confidence in the reviewing court and will not carry the day. *George F. Mueller & Sons, Inc. v Northern Illinois Gas Co.,* 32 Ill.App.3d 249, 255, 336 N.E.2d 185, 190 (1st Dist. 1975).

What if there was a court reporter?

Occasionally, there was a court reporter present for the trial but the appellant cannot afford the cost of a write up and for that reason wants to utilize a bystander's report of proceedings. Although the rule arguably does not allow this, the Appellate Court has said in *dictim* that it is not only

allowed but encouraged. *Hall v Turney,* 56 Ill.App.3d 644, 649, 371 N.E.2d 1177, 1181 (1st Dist. 1977). Of course, this raises the obvious question as to whether the value of the time that the lawyer will spend on the bystander's report of proceedings will be any less than the court reporter's write up charges.

Agreed statement of facts

Finally, there is one quick and easy alternative to both a court reported verbatim report of proceedings and a bystander's report of proceedings. Rule 323(d) permits the parties to file an agreed statement of facts by written stipulation, in lieu of a verbatim report of proceeding or a bystander's report of proceedings. This instrument may, but need not, read like a report of proceedings. It may be a simple narrative of all the agreed facts, or it may be a narrative of each witness's testimony like a report of proceedings, or both.

The stipulation as to facts, in lieu of a report of proceedings, is infrequently used in Illinois appellate practice. Over the last 46 years, the author has been involved in 110 appeals that were decided by reviewing courts and another 20 or so that were concluded before a decision on the merits was rendered by the reviewing court. In not one of those cases was there even a proposal for an agreed statement facts, let alone the use of one. Guide yourself accordingly. ■

Richard Lee Stavins is a partner in the law firm of Robbins, Salomon & Patt, Ltd. in Chicago. He concentrates his practice in trial and appellate litigation. He is a member of the CBA Tort Litigation and Circuit Court Committees

By William Bogot and Maura Neville

Rethinking Drug-Free Workplace Policies

Will Your Zero-Tolerance Policy Go Up in Smoke?

In 2013, Illinois became the 21st state to adopt a medical marijuana law, the Compassionate Use of Medical Cannabis Pilot Program ("MCPP"). The new law will require employers to revisit or rethink zero tolerance or drug-free workplace policies. The MCPP does not prohibit an employer from, among other things, (1) adopting reasonable regulations concerning the consumption, storage, or timekeeping requirements for patients related to the use of medical cannabis; (2) enforcing a policy concerning drug testing, zero-tolerance, or a drug free work place provided the policy is applied in a non-discriminatory manner; or (3) disciplining an employee for failing a drug test if failing to do so would put the employer in violation of federal law or cause it to lose a federal contract or funding. 410 ILCS 130/50 (a), (b), and (d).

ILLINOIS' RIGHT TO PRIVACY IN THE WORKPLACE ACT, on the other hand, generally prohibits an employer from refusing to hire or discharging any employee because "the individual uses lawful products off the premises of the employer during nonworking hours." 820 ILCS 55/5(a) (emphasis added).

Further complicating matters, marijuana – whether recreational or medical – is still illegal under federal law. Thus, employers face a rather perplexing question: whether an employee, who is a registered MCPP patient, can be discharged for violating an employer's drug free or zero-tolerance policy, when the employee never possessed medical marijuana at work, never was under the influence of medical marijuana at work, and only used medical marijuana in his or her own home outside working hours.

This very question was answered in the affirmative under both Oregon and Colorado law in *Emerald Steel Fabricators, Inc. v. Bureau of Labor & Indus.,* 230 P.3d 518 (Ore. 2010) and *Coats v. Dish Network, LLC,* 303 P.3d 147 (Colo. App. 2013).

In Emerald Steel Fabricators, Inc., the employee, a temporary drill press operator, used medical marijuana to alleviate severe anxiety, panic attacks, nausea, vomiting, and stomach cramps. During the course of his temporary employment, he used medical marijuana one to three times per day, but never at work. The employer considered hiring the employee full time, but, instead, discharged the employee after the employee told his supervisor that he had a registry identification card and that he used marijuana for medical purposes.

Following his discharge, the employee filed a complaint with the Bureau of Labor and Industries alleging that the employer had discriminated against him in violation of ORS 659A.112 which prohibits discrimination because of a disability and requires that employers make reasonable accommodations for a person's disability unless doing so would impose an undue hardship on the employer. The Administrative Law Judge ultimately ruled that the employer violated portions of the statute. The employer appealed, arguing that the statute does not apply to persons using state-licensed medical marijuana.

The Court of Appeals did not reach the merits of the employer's argument and, thus, the matter went up to the Oregon Supreme Court, which ultimately held that employers are not required to accommodate their employees' use of medical marijuana. According to the Oregon Supreme Court, to the extent Oregon Medical Marijuana Act affirmatively authorizes the use of medical marijuana, the federal Controlled Substances Act expressly prohibits it. Further, since the employee was engaged in the illegal use of drugs under federal law and was discharged for that reason, the protections of ORS 659A.112 did not apply.

Similarly, in *Coats,* the employee, a telephone customer service representative, was a quadriplegic and never used and was never under the influence of marijuana at work. Still, the employee was fired after he tested positive for marijuana, which violated the employer's drug policy. The employee sued the employer under Colorado's Lawful Activities Statute which prohibits an employer from discharging an employee for "engaging in any lawful activity off the premises of the employer during non-working hours." The trial court dismissed the complaint and the Appellate Court affirmed. According to the Appellate Court, because the employee's state-licensed medical marijuana use, at the time of his termination, was subject to and prohibited by federal law, it was not "lawful activity." The *Coats* case is currently on appeal to the Colorado Supreme Court, where is has been fully briefed and argued, and a decision is expected any day now.

Unemployment Benefits

A somewhat different result was reached by the Michigan Appellate Court in *Braska v. Challenge Mfg. Co,* 2014 Mich. App. LEXIS 2112 (Mich. App. 2014). There, the employee, a material handler/hi-lo operator, injured his ankle on the job and was sent to the medical center where he was required to take a mandatory drug test. He tested positive for marijuana and disclosed, for the first time, that he had obtained a medical marijuana card earlier that year and regularly use state-licensed medical marijuana for his chronic back pain. Shortly thereafter, the employee was terminated for violating the company's drug-free workplace policy. There was

no evidence that the employee had ingested or was under the influence of marijuana at the workplace. Nonetheless, the employer then challenged the employee's application for unemployment benefits. The sole issue for the Appellate Court was whether unemployment benefits may be denied to an individual who used medical marijuana outside of work in accordance with state law. The Appellate Court ruled in favor of the employee, holding that the employee was not disqualified from receiving unemployment benefits.

No Illinois court has yet to rule on whether an employee who is a registered medical marijuana patient in Illinois can be discharged from employment or receive unemployment benefits for violating an employer's drug free, zero-tolerance policy or for failing a drug test, when the employee never possessed and was never under the influence of medical marijuana at work. However, just last December, the Illinois Appellate Court ruled that an employee is entitled to unemployment insurance benefits after he was terminated for using illegal, non-medical marijuana, outside of the work place. *Eastham III v. The Housing Authority of Jefferson County, et al.,* 2014 IL App (5th) 130209

In Eastham, the employer had a drug and alcohol free workplace policy which provided that employees may not use or be under the influence of alcohol or any controlled substance "while in the court of employment." The employee was required to submit to a random drug test pursuant to the policy. After taking the test, the employee informed his supervisor that he had smoked marijuana while on vacation a few weeks earlier and that he did not believe he would pass the test. It turned out that the employee did pass the test, but the employer still terminated the employee for violating the policy. The employee was thereafter denied unemployment benefits by the Board of Review of the Department of Employment Security because his ingestion of marijuana while on vacation constituted "misconduct…while in the course of employment." On appeal of the Board of Review's denial of unemployment benefits, the Circuit Court reversed the agency's denial of benefits.

In affirming the decision of the Circuit Court, the Appellate Court held that the employee did not violate the employer's policy because he was not under the influence "while in the course of" his employment. The Appellate Court rejected the employer's interpretation of this phrase to mean "any time the plaintiff was an employee of the Housing Authority." Moreover, the Appellate Court held that the policy was not reasonable because the employee was not in a safety-sensitive position. Lastly, the Appellate Court rejected the employer's argument that the policy is reasonable because the employer is required to maintain a drug free workplace policy in order to remain eligible for federal funding, because the federal statute does not require grant recipients to discharge an employee for off-duty marijuana use.

The Appellate Court emphasized that it was not ruling on whether the employer was justified in discharging the employee for his admitted marijuana use absent a positive result on a drug test. "The question is only whether his conduct amounts to 'misconduct' that will disqualify him from receiving unemployment insurance benefits." According to the Appellate Court, an "employee's conduct may be sufficient to justify his discharge without constituting misconduct sufficient to disqualify him from benefits under the Unemployment Insurance Act."

Clarity Needed

The law of medical marijuana is quickly evolving, and the intersection of medical marijuana law and employment law is complex. In Illinois, it remains unclear whether an employee who is a registered MCPP patient can be discharged from employment for violating an employer's drug free or zero-tolerance policy (or for failing a drug test), when the employee never ingested and was not under the influence of medical marijuana at work. The Eastham decision seems to suggest that that Illinois courts may be willing to protect employees' off-duty use of medical marijuana.

All employers in Illinois should update their employee handbooks and policies to take into account medical marijuana. In addition, they should inform and train their human resource personnel accordingly. ■

William Bogot represents clients before government agencies in highly regulated industries, including medical marijuana and gaming, at Fox Rothschild LLP. Maura Neville represents clients in all aspects of commercial and employment litigation, including mediation and arbitration at Nixon and Peabody LLP

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By Richard C. Balough

FAA Draws Clear Legal Distinction

Under Current Law, There's No Place for Commercial Drones

IF ONE OF YOUR CLIENTS WANTS to use a drone for business, you should tell him to take a deep breath. Although drones can take high-quality pictures and videos for a variety of commercial uses, such use is not generally permitted.

Although there are no significant technical difference between a recreational drone and a commercial drone, the Federal Aviation Administration (FAA) has drawn a clear legal distinction. The FAA prohibits using drones for any commercial purpose without a special permit. Only recently have some businesses been able to obtain these permits.

This ban against commercial drones goes back to a 2007 FAA order, which allows the commercial use of drones only if the operator has obtained special FAA permission. In an attempt to resolve the roadblock created by this order, in 2012 Congress passed the FAA Modernization and Reform Act, which requires the FAA to integrate drones into the National Airspace System (NAS). The Act directs the FAA to develop a five-year "roadmap" for introducing drones into the NAS, to initiate a rulemaking on small unmanned aircraft, and to establish pilot projects. To date, the FAA has not issued any rules to allow commercial use except via its special permit process.

The cost of drones, technically Unmanned Aircraft Systems (UAS), has decreased dramatically and the quality of the on-board cameras continues to increase. Drones range from the very small, less than several ounces, to the size of a small airplane. Most personal drones weigh well under 50 pounds. They can fly several thousand feet in the air and out of sight of the operator.

Business Insider reports that over the next decade 12 percent of an estimated $98 billion in global spending on drones will be for commercial purposes. Another report, from the Association for Unmanned Vehicle Systems International, found the industry will create more than 100,000 jobs in the United States in the first decade alone.

With a camera attached, a small drone costing $1,000 or less provides a wide range of commercial functions. As functionality increases, such as more sophisticated cameras, infrared devices and the like, the price increases as well. Actual and announced uses for drones include:

- Photographing bridges with the images reviewed to detect faults or areas where maintenance is required. Drones can do a more thorough job than an on-the-ground crew and without having to use scaffolds.
- Surveying and assessing damage caused by tornados or hurricanes by insurance carriers. By using drones, the insurance adjusters would have access to the damage almost immediately and would not interfere with search, recovery, and clean-up operations. This would speed up issuance of checks to their policy holders.
- Inspecting oil and gas pipelines, electric transmission lines, and solar panels. Drones can fly closer to the pipelines, transmission lines, and solar panels at lower speeds and send images back for an in-depth review.
- Providing journalists with overhead images of fires, disasters, and other news events.
- Managing crops. Not only can drones take photographs of crops to monitor crop health and development, drones may apply fertilizers, insecticides, and other treatments, reducing the need for large, manned crop duster planes.
- Searching for missing persons. This is especially beneficial where the terrain makes it difficult to do a walking search. A drone can cover far more territory in a short period of time than search parties walking the area.
- Mapping archaeological sites. Some archeological sites are not easily surveyed by airplane and using drones is far less costly.
- Photographing homes for real estate agents.
- Delivering packages, as has been announced by Amazon.com.

Collisions Possible

However, these uses and others also raise both safety and legal issues. While drones are small and lightweight, a collision with an airplane might cause extensive damage. If a drone is sucked into a jet engine, it could cause engine failure. A drone flying into a helicopter tail rotor could cause the helicopter to go out of control and crash. As one pilot told the FAA, "If one of those things hits us, we're coming down."

A drone inspecting a farm field for one farmer could collide with a crop duster. Or an out-of-control drone could crash into people or things, which is what happened when a tourist's drone crashed into a hot spring at Yellowstone National Park, causing damage to the spring itself. In another reported drone incident, a Northern California wildfire crew had to stop its aerial firefighting efforts when a private drone was spotted, raising the possibility of a mid-air collision.

Some proponents of commercial drones argue that the small craft should be given the same treatment as model aircraft, which is covered by FAA Advisory Circular 91-57. This circular generally limits operations for hobby and recreational use to below 400 feet, away from airports and air traffic, and within sight of the operator. The 2012 Modernization Act confirms drones are "model aircraft" exempt from regulation if they are flown strictly for hobby or recreational use, the aircraft weigh less than 55 pounds, are operated in a manner that does not interfere with any manned aircraft, and are flown within visual line of sight of the person operating the aircraft. However, the FAA maintains the right to take enforcement action against model aircraft operators who operate their aircraft in a manner that endangers the safety of the NAS as well as to protect people and

Incidents involving drones are increasing. In a recent response to a Freedom of Information Act request by the *Washington Post,* the FAA reported that in a five-month period, pilots and air traffic controllers reported 25 instances where drones came within a few seconds or feet of crashing into much larger aircraft, with many of the near misses occurring near large airports. The FOIA report noted:

- A drone came within 800 feet of a New York Police Department helicopter, resulting in the arrest of two men operating the drone who were charged with reckless endangerment.
- The pilot of an Airbus landing at LaGuardia Airport reported that a drone flew "under the nose of the aircraft" at 1,500 feet.
- Air traffic controllers reported a drone "almost hit" an airline inbound into LaGuardia at 4,000 feet.
- The pilot of a small plane reported that a drone came within 20 feet of the aircraft at 1,500 feet near Dulles Airport.
- A pilot of a commercial aircraft arriving at Charlotte reported "We were nearly hit by a drone" while on approach at 3,100 feet.
- The nurse in a life flight helicopter descending in Pottsville, Pa. reported seeing a drone flying toward the aircraft "at a high rate of closure," requiring the pilot to make an evasive turn, missing the drone by 50 to 100 feet.

The FAA report did not determine if these drones were being operated for recreational or commercial purposes.

property on the ground. The FAA argues that the model aircraft rules do not apply to commercial uses of drones, regardless of how low they are flying.

Recently, the FAA sent cease and desist letters to: a commercial photographer who used a drone to take aerial photographs of a house for a real estate company; a photographer who posted and offered to sell aerial shots taken with a drone of a concert in Chicago's Grant Park; a search and rescue organization that used drones to help find missing persons when ground and horseback searches are not successful or the terrain is too difficult for other methods (https://www.youtube.com/watch?v=UTcWo4OAwtA. The FAA argued that, because the organization took donations, it was involved in a commercial operation); and two journalism schools, which were using drones to take pictures for class stories.

Commercial Use

According to the FAA, each of the above uses is a commercial use. However, if the "commercial" aspect of the transaction were eliminated, these actions would be unregulated by the FAA.

Because, on one hand, the FAA does not assert any jurisdiction over the non-commercial use of drones, but on the other asserts total jurisdiction over commercial drones, it raises the interesting dichotomy where, if an individual flies a drone to take pictures of her house, her action is not regulated. At the same time, if the same photographs were taken by a commercial photographer for use by a real estate agent selling the house, the activity would be regulated and–under today's FAA regulations–it would be illegal.

In 2013, the FAA issued its first "roadmap" under the 2012 Modernization Act. In early 2014, the FAA approved six test sites for the commercial operation of drones at the University of Alaska, State of Nevada, New York's Griffiss International Airport, North Dakota Department of Commerce, Texas A&M University, and Virginia Polytechnic Institute and State University. The test sites are to continue until 2017. The FAA has yet to issue any proposed rules regarding commercial drone use.

Special Use Exemptions

Even though there are no proposed or adopted regulations on commercial use, businesses can apply to the FAA for special use exemptions, which are subject to public notice and public comment. In September 2014, the FAA granted authority to six aerial photo and video production companies in the film and television industry to use drones, which weigh about 50 pounds, for their filming. The certificates require the operators hold private pilot certificates, keep the drones within line of sight at all times, restrict the flights to the "sterile area" on the set, conduct an inspection of the aircraft before each flight, and prohibit operations at night.

More recently, the FAA granted exemptions to four other entities, including two in the Chicago area. The two companies will use the drones to do topographic surveys, environmental site assessments, and take aerial photos for construction projects. There are at least 40 other requests pending.

The ban on commercial drones also grounds drones for news gathering. This has drawn the ire of the media, which argue that the ban violates the First Amendment because news gathering is not a "commercial" use. Rather, the media argue, use of drones benefits the public because the lower-cost aerial photography would help newsrooms bring more accurate and useful information to the public.

Journalists also are concerned about some state laws on drones. For example, Utah criminalizes interference with agriculture operations, which includes "knowingly or intentionally" recording an image of an

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Vielen Dank, Gracias, Dziekuje, Thank You

By Paul J. Ochmanek, Jr. YLS Chair

This is my last article as Chair of the Young Lawyers Section. Typically, the Chair uses this article to thank everyone who contributed to the YLS throughout the year. This is my toughest article to write, as so many people have contributed during this past year. To begin, my executive board has been selfless with their support. Many, if not all, of my new initiatives would not have started, let alone been completed, without them. Specifically, all credit goes to Matt Passen for creating the Shadow Program web portal. (I urge you to participate if you have not yet done so.) I wish Matt the best next year as Chair. Katie Liss and Brandon Peck secured key presenters for our spring seminar on legal issues in the LGBT community. Jonathan Amarilio, Matt Jenkins and Trisha Rich were instrumental in the success of the Suits for Success program. Jonathan Amarilio and Geoff Burkhart worked tirelessly to ensure my articles were delivered on time and edited properly. Malcolm "Skip" Harsch and Gabby Sapia oversaw all of the YLS's 30 special projects. Thank you all very much for assisting the YLS this year!

This year's theme focused on "Opening Opportunities." I challenged all members of the bar to get involved in at least one new program or project. Helena Livitz led the Suits for Success Program by securing a presenter, receiving and reviewing the Christo Rey High School students' resumes, and locating mock interviewers. Jonathan Mraunac started the year off right with the first ever YLS Boat Cruise, and Jonathan continued to excite YLS members as our socials moved to new locations throughout the City. None of this would be possible without support from our generous sponsors. Additionally, our special project coordinators were always ready to take on projects. Their efforts have touched many in the community in a short period of time. Thank you all for your time and energy. Our projects and socials would not have succeeded without you.

Beyond the success of this year, many people have helped me over the past nine years, and all of them contributed to who I am today. However, there are two people who have remained constant over these years: Dan Cotter and Jenni Bertolino. Dan Cotter introduced me to the YLS when I was a 3L. I am not sure I would have joined the organization or become Chair without him. Dan has always been available and responsive to my questions, comments, and concerns. Thank you, Dan, for your mentorship and friendship over the years.

Jenni has been a part of the YLS since I was a real estate committee chair. Presidents and Chairs have come and gone, but Jenni has always been there. She is a warm and passionate individual whom I have had the pleasure of working with and getting to know better in my work as Chair. She was always there offering me guidance and a shoulder to lean on. Jenni is truly an indispensable part of this organization. Unfortunately, she is departing after the CBA annual meeting. Rest assured, Jenni, you will be missed dearly by all! Thank you so very much for everything over the past nine years. I wish you and your family nothing but happiness and success.

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THE DIFFERENCE BETWEEN ILLINOIS AND DELAWARE

Shareholder Inspection Rights

By Daniel R. Saeedi and Richard Y. Hu

Shareholders often find themselves in the passive position of watching corporate events unfold through the decision-making of others. When these decisions harm the corporation, one of the most important rights a shareholder has is the right to seek inspection of corporate books and records. The right to seek inspection not only enhances corporate transparency, but conceptually it also may provide necessary evidence for the prosecution of a potential shareholder derivative lawsuit.

Illinois and Delaware cases differ in a number of ways involving shareholder inspection rights. Illinois cases emphasize the value of corporate transparency in applying a shareholder-friendly standard. Conversely, Delaware emphasizes the importance of not burdening the corporation with intrusive inspection demands, as well as deference to management decisions.

These differences have practical considerations. They affect how lawyers are able to assert a "proper purpose" for an inspection demand. They also impact the permissible scope of inspection, as well as procedural issues such as jurisdiction and permissible remedies. Lawyers who understand these differences will better position their clients, whether minority shareholders or company management, to effectively prosecute or defend against shareholder inspection demands.

Illinois' "Proper Purpose" Standard– Good Faith Allegations

The most important difference between Illinois and Delaware law lies in each state's courts' interpretations of the "proper purpose" standard.

In Illinois, the right of shareholders to inspect records is governed by the Business Corporation Act of 1983, 805 ILCS 5/1 *et seq*. Section 7.75 of the Act provides that any person who is a shareholder of record has the right to examine the corporation's books, records and minutes, "but only for a proper purpose." To invoke such right, the shareholder must make a written demand, "stating with particularity the records sought to be examined and the purpose therefor."

Under Illinois law, the burden of establishing a "proper purpose" falls on the shareholder to articulate in its demand a good faith and specific and honest purpose, such as it believes an officer or director has engaged in self-dealing or other misconduct. These allegations need not be corroborated by documentary proof of the misconduct or made with a high degree of particularity. Illinois courts do not put the onus on the shareholder to prove a derivative claim before it is entitled to documents that would likely inform the contours of the claim.

A recent case, *Sunlitz Holding Co., W.L.L. v. Trading Block Holdings, Inc.*, 2014 IL App (1st) 133938, illustrates this standard. In *Sunlitz,* the plaintiff shareholders made an inspection demand for a vast array of corporate documents and asserted their purpose was to assess whether there had been any self-dealing by the company's management or directors. The shareholders referenced the board's approval of a stock option plan that resulted in the dilution of stock to the detriment of shareholders and to the benefit of the directors. The defendants refused to provide records other than profit and loss statements. The shareholders alleged those records showed that while revenues significantly increased each year, net losses continued to accrue due to unspecified operating expenses.

Although the circuit court held that the plaintiffs failed to assert a proper purpose, the appellate court reversed. The court held that even though the plaintiffs failed to allege which directors engaged in self-dealing, or even identify which business actions were self-dealing, a proper purpose was nevertheless asserted. The court noted that although the plaintiffs had not yet reviewed records, the "defendants would have plaintiffs state the details of the alleged mismanagement, which plaintiffs are not certain has even occurred." Rather, the court held "plaintiffs do not need to establish actual mismanagement or wrongdoing. Good faith fears of mismanagement are sufficient." *Sunlitz*, 2014 IL App (1st) 133938, ¶ 23.

Although there is no burden shifting, Illinois courts will not always accept what might otherwise be a facially proper purpose. Where there is evidence that the shareholder is actually using an inspection demand for an improper purpose, courts will prevent such inspection. For example, in *West Shore Assoc. v. Am. Wilbert Vault Corp. et. al.,* 269 Ill. App. 3d 175, 180-81 (1st Dist. 1994), the court found for the defendant corporation where the evidence showed that the plaintiff shareholder had bought only six shares of stock and then immediately made a very burdensome demand, and where the shareholder's president was also the president of a principal competitor of the defendant. But cases like *West Shore* are the exception, not the rule.

Delaware's "Proper Purpose" Standard– "Credible Basis" Based on Evidence

Unlike Illinois' statute, Section 220 of the Delaware General Corporation Law, 8 Del. C. § 220, which governs shareholder inspection, states that "[a] proper purpose shall mean a purpose reasonably related to such person's interest as a stockholder." In application, Delaware's proper purpose standard is management-friendly. Delaware courts require shareholders to present some evidence to suggest a "credible basis" from which a court may infer that mismanagement, waste or wrongdoing may have occurred. The credible basis standard may be satisfied "by a credible showing, through documents, logic, testimony or otherwise, that there are legitimate issues of wrongdoing." *Seinfeld v. Verizon Communications, Inc.*, 909 A.2d 117, 118-19 (2006).

The rationale for employing the "credible basis" standard is that at some point "the costs of generating more information fall short of the benefits of having more information," and these costs would be "wealth-reducing" and not in the shareholders' best interests. *Seinfeld,* 909 A.2d at 122. Delaware courts applying the credible basis standard have dismissed shareholder claims under Section 220 even where the shareholder's purpose was proper on its face, but not substantiated with any underling documentation. In such cases, Delaware courts have held the shareholder did not show a credible basis to infer wrongdoing.

More specifically, in *Seinfeld,* a Verizon shareholder sought inspection under Section 220 based on alleged mismanagement and waste. The computations the shareholder performed showed that three Verizon executives were paid $205 million over three years, despite their questionable and duplicative responsibilities. The Delaware Supreme Court described the legal issue as "narrow": "should a stockholder seeking inspection under section 220 be entitled to relief without being required to show some evidence to suggest a credible basis for wrongdoing?" The court answered "no" to this question.

While the Delaware Supreme Court never challenged the shareholder's motivation for alleging mismanagement and waste, the court affirmed the trial court's ruling that the shareholder "had not met his evidentiary burden to demonstrate a proper purpose to justify the inspection of Verizon's records." *Id.* at 118. The shareholder acknowledged in his deposition that he did not have factual support for his claim and that his compensation calculations possibly were wrong. Thus, his attempt to seek records to substantiate his claims was barred because his purpose was based on "mere suspicion." *Id.* at 123. *See also Westland Police & Fire Axcelis Tech.*, 1 A.3d 281, 288 (2010) (relying on *Seinfeld* and finding that shareholder inspection request did not satisfy the credible basis standard when based on "bare accusations.").

There is another important difference between the two states' interpretations of the "proper purpose" standard as it relates to corporate minutes, shareholder records and voting trust agreements. Illinois, by statute, shifts the burden of proof to the corporation to show there was an improper purpose when corporate minutes or voting trust agreements are being sought for examination. 805 ILCS 5/ 7.75(c-d). No such burden shifting occurs in Delaware as it relates to these specific documents. Both states, however, by statute place the burden on the corporation when there is a request for a shareholder list. Delaware also places the burden on the corporation when the shareholder seeks to examine stock ledgers. 8 Del. C. § 220(c).

The Scope of Inspection

In addition to differing on how to interpret a "proper purpose," Illinois and Delaware differ on the scope of inspection allowed. In Illinois, once a proper purpose has been established, the scope of inspection is broad: a shareholder is entitled to "all books and records necessary to make an intelligent and searching investigation" and "from which he can derive any information that will enable him to better protect his interest." *Sunlitz*, 2014 IL App (1st) 133938, ¶ 26. A shareholder of an Illinois corporation need not establish a proper purpose with respect to each document he desires to examine. Rather, a proper purpose that would entitle him to inspection generally is sufficient.

Delaware's standard is again more stringent. Even where a shareholder establishes a proper purpose to inspect under Section 220, the stockholder bears the burden of proving that each category of books and records is essential to accomplishment of the articulated purpose. Delaware courts have wide latitude in determining the proper scope of inspection and will "narrowly tailor the inspection right to a stockholder's stated purpose." *Thomas & Betts Corp. v. Leviton Mfg. Co., Inc.*, 681 A.2d 1026, 1035 (1996).

Jurisdiction and the Possibility of Removal

Even where Delaware and Illinois are similar in their standards, the practical effects of those standards may be different. This is especially true regarding jurisdiction.

For counsel defending an Illinois corporation in a shareholder inspection suit, the possibility of removal to federal court based on diversity might seem like a tempting strategy. However, Illinois precludes this maneuver by requiring that inspection actions be brought in the "circuit court of the county in which either the registered agent or principal office of the corporation is located." 805 ILCS 5/7.75(c). At least one federal court has questioned whether it has jurisdiction to hear a shareholder inspection case brought under Section 7.75. *See Stauffer v. Westmoreland Obstetric & Gynecologic Assocs., S.C.*, 2001 WL 585510, at *9 fn. 9 (N.D. Ill. May 25, 2001).

Delaware also contains an exclusive state jurisdiction requirement. *See* 8 Del. C. § 220(c). The practical effect of this forum selection provision is, however, much different. The Delaware Court of Chancery's calendar is dominated by corporate cases, and it is the same forum that has honed the "credible basis" standard discussed above. Attorneys for Delaware corporate defendants generally prefer litigating these issues in Delaware's management-friendly Chancery Court.

The Remedy for Improper Refusal to Allow Inspection

The statutory remedy for improper refusal to allow inspection of an Illinois corporation's books and records also differs from Delaware. Under Section 7.75(d) of the Illinois Business Corporation Act, the remedy for improper refusal to allow inspection is "a penalty of up to ten per cent of the value of the shares owned by such shareholder," in addition to any other damages or remedies "afforded by law." Delaware, on the other hand, affords no such statutory penalty.

The Impact on Derivative Suits

Delaware courts are skeptical of derivative actions filed before a shareholder first attempts to exercise its inspection rights. *See King v. VeriFone Holdings, Inc.*, 12 A.3d 1140, 1145 (Del. 2011) (discussing how Delaware courts "strongly encourage" seeking records inspection before filing a derivative action). While no Delaware court has gone as far as to require a Section 220 action prior to a derivative suit, they have at times dismissed derivative suits and simultaneously advised plaintiffs to first exhaust their inspection rights. In contrast, Illinois courts do not stress the necessity or even importance of exhausting inspection rights before filing a derivative action.

Practical Considerations for Attorneys

Attorneys and businesses should also understand the practical differences between Illinois and Delaware regarding shareholder inspection demands. For example, if the desire is for more transparency and minority shareholder influence, Illinois might be appealing. On the other hand, if the prospective corporation seeks to give greater influence to its managers and directors, Delaware will be preferable, both as a place of incorporation and a forum for litigation.

Finally, as a practical matter, the scope of permissible inspection will probably be broader in Illinois. Where Delaware law controls, the corporation will have stronger grounds to limit the categories of production, especially where the shareholder has not shown the relevance of specific documents to the stated purpose. Understanding these differences between Illinois and Delaware can position a party well for prosecuting or opposing an inspection demand. ■

Daniel R. Saeedi and Richard Y. Hu are attorneys at the law firm of Taft, Stettinius & Hollister, LLP.

YLS SHADOW PROGRAM

YLS Chair Paul Ochmanek invites attorneys and law students to participate in the Young Lawyer Section's new Law Student Shadow Program. The program aims to assist law students in obtaining an understanding of the practice of law as well as serve as an introduction to our profession's many practice areas. Become involved with the program for as little as a single hour of your work day! Learn more about the program or schedule opportunities at www.chicagobar.org/ylsshadow.

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LPMT Tip: How To Re-Open a Recently Closed Tab

Have you ever closed out of a browser window you didn't mean to? Don't panic. There's several ways to get back to that page. Internet Explorer 11, Firefox, and Chrome all allow you to retrieve the tab easily. Press Ctrl+Shift+T or right-click on the tab bar and select "Reopen closed tab." Viola! The page is back open. If you press Ctrl+Shift+T again, it will open the second last closed tab.

Firefox and Chrome also have methods of retrieving closed tabs via their settings menus.

In Chrome, simply click the "hamburger" menu symbol. Near the top, you'll see the option for "Recent Tabs." Mouse over that and select the tabs that were recently closed.

In Firefox, it's only slightly different. Click the "hamburger" menu and then select History (the clock icon). This will pull up a menu that allows you to see and restore the closed tabs.

TAKING AND DEFENDING YOUR FIRST DEPOSITION

The Spectacular Seven

By Fitzgerald T. Bramwell and Yana Karnaukhov

There is a reason that what lawyers do is called "practice," as opposed to something else. Much of what we do is a combination of art and science. Or, perhaps to be more precise, much of what we do is a combination of art *and* compliance with the rules of procedure. Taking a good deposition is an art *and* a science; to be good takes both hard work *and* practice. It is our hope that some of these recommendations will accelerate the learning curve.

Proper preparation prevents poor performance. Depositions are expensive

in time and treasure. For example, consider a garden variety discovery deposition in Illinois state court, limited to three hours by operation of Rule 206. To take that deposition effectively, counsel is going to need to do some homework: he is going to need to first think about how the witness fits into the case, and then review relevant documents, answers to relevant interrogatories, and any other discovery issued. We cannot emphasize this last point enough. If you do not know the documents, requests to admit, and answers to interrogatories backward and forward *before* deposing a witness, you are leaving some of your client's money on the proverbial table.

Given the expense of taking even a short deposition, it behooves counsel to understand *why* he is going through all of that time and trouble. How does the deposition fit into the overall discovery plan? There are several reasons to take a deposition, finding out what a witness knows about a particular topic being only the most basic. Depositions are also useful for obtaining admissions for use in support of a dispositive motion, for example, for laying foundations for the admission of certain documents, or for clarifying ambiguities in prior discovery answers. If you do not know *why* you are deposing a particular witness, you are wasting your client's time and money.

Don't let counsel call your client by first name. The old proverb says that you catch more flies with honey than you do with vinegar. This proverb applies to the deposition process. You can get more of what you want from a witness by being polite than you would ever get by being rude, or by being a bully—politeness should never be confused with weakness. Invite the witness to address you by your first name. Ask the witness if you can use her first name. Make the experience as conversational and natural as possible. This means use plain English and not *legalspeak* when talking to a non–lawyer. Try to make the witness forget that anything she says can be used against her at trial.

If you're defending a deposition, it behooves you to remind your witness that opposing counsel is not on her side. While the Illinois and federal rules governing discovery severely limit what counsel can say and do during the deposition, counsel is not without options. Consider taking a restroom break every hour or so. Object to objectionable questions. (Do not, however, engage in obstructionist tactics.) Make sure your witness remains hydrated. And absolutely do not allow opposing counsel to establish a level of rapport and comfort that comes with using first names.

Corporations are people, my friend. Consider the case where a witness—let's call him Tom—testifies that he has no knowledge of a particular subject; however, Tom recommends that you talk to his colleague, Richard. Yet under oath, Richard says that he knows nothing about the topic, and suggests that you talk to Harry. Remember that each deposition you take is very expensive. What's counsel to do?

Rule 206(a)(1) of the Illinois Supreme Court and Rule 30(b)(6) of the Federal Rules of Civil Procedure allow a party to depose an entity. First, counsel identifies the topic or topics of the deposition. Then, *it is the entity's responsibility* to designate a witness to testify on behalf of the organization about the designated topics. In other words, counsel taking the deposition tells the deponent the topics for the deposition and the deponent then finds someone knowledgeable, saving time and money. So, rather than deal with the run-around, learn to love corporate personhood and make the other side do the hard work of getting you the information you need.

Time is on your side. Deposing someone is forcing them to have a three-hour conversation with you where you can pick at every word they say, and where you do not have to allow them to dodge an evasive answer. After about 45 minutes, many witnesses start to show signs of fatigue. If the witness did not eat before the deposition, chances are that his blood sugar is running very low towards the end of the deposition–this translates to a tired and (possibly) ornery person during the last hour of testimony. If he has not had anything to drink during the deposition, the witness may be slightly dehydrated and physically uncomfortable. (Note to attorneys defending a deposition—keep some candy bars in your brief case, and make sure that there is water for your witness before you go on the record).

A "hangry" witness is more likely to forget the deposition preparation than a witness who is calm and comfortable. Similarly, a tired witness is less likely to pay attention to the call of the question and volunteer information. If you're taking the deposition and you want to get some admissions, consider leaving the appropriate questions until the end of the day, when the witness is more likely to give you what you want.

Prepare your witness. Even witnesses who have been deposed before are anxious about the experience. The key to successfully defending a deposition—particularly the deposition of a nervous witness—is preparation. Tell the witness why she is being deposed. Tell her what to expect both in terms of potential questions, *and* in terms of how the deposition will proceed. You will be surprised how helpful inexperienced witnesses find this latter advice.

Instruct your witness as how to conduct herself during the deposition. First and foremost remind her to be honest: sometimes witnesses labor under the incorrect impression that they should lie to help counsel's theory of the case. Not only is this highly unethical, but there is almost always a document that can expose any lie. And a lie exposed is always more damaging than the truth. Reminding a witness to be truthful can also help put the witness at ease. It is a lot easier to tell the truth the first time than to remember the details of a lie. Being truthful, however, does not mean volunteering information, nor does it mean doing anything to help opposing counsel do his job. Giving true, complete, but short

JUNE 11 SOCIAL

Spring into Summer with the CBF Young Professionals Board and the CBA Young Lawyers Section on Thursday, June 11, 2015 from 5:30 p.m. to 8:30 p.m. at Tradition Gastropub & Kitchen. Help us kick off the summer and celebrate our access to justice efforts with drinks, food and mingling. This event brings people together to have fun, connect with other young professionals in the community, and learn more about the CBF's work, all while raising money that advances the CBF's access to justice efforts.

Tickets are $35 in advance, $40 at the door, and include 3 drink tickets (beer, wine, call drinks) and appetizers). A limited number of super early bird Casino Legale tickets will be sold for $75 at the event. Raffle prizes include CBF event tickets, Cubs tickets and a private tour of KOVAL Distillery for up to 25 people. Get tickets at www.chicagobarfoundation.org/spring-summer.

answers is what the witness should do. You should also counsel the witness to answer a question only if she understands it. If she does not understand the question, instead of guessing the answer, it is always a better strategy to ask opposing counsel to restate the before attempting to answer it.

Finally, prepare the witness for the possibility that the questioning may get heated and that opposing counsel may get loud. Opposing counsel can try to implement this strategy to rattle the confidence of your witness. Then, when push comes to shove, your witnesses will fare out better as they know not take anything personally. Instill in them the "it is business, and it is not personal" approach. Know the rules for filing a motion for a protective order, have the judge's telephone number easily accessible, and let your witness know that you will protect her if the situation is spiraling out of control.

Keep it short and sweet. It is very likely that you will use the deposition either at trial or in support of a dispositive motion. To use it in this capacity, the fact finder needs to be able to follow both your questions and the witness's answers. Therefore, counsel needs to structure the questions in such a way that jurors who hear the transcript read back to them will be able to follow what is going on. Convoluted, complex, and ambiguous questions will not get you what you want—such questions lead only to convoluted, complex, and ambiguous answers.

Read the transcript. After taking the time to take a deposition, you should use it! As soon as you receive the deposition transcript from the court reporter, review it carefully. First, you want to make sure that most important questions and answers were recorded accurately. If a crucial question or answer was recorded incorrectly, you want to remedy it as soon as possible through use of an *errata* sheet. Furthermore, by reviewing the transcript you will be able to identify subjects on which additional discovery might be helpful. While going through the transcript, make sure to note the names of new potential witnesses or previously unknown documents.

Finally, by reading the transcript carefully and analyzing the types of questions you asked and the answers you received, you are training yourself for the next deposition. This will enable you to understand your pattern of questioning. After reviewing a transcript, make a mental note of two or three things you want to do differently the next time around. Before you know it, you will become a stronger questioner who can more clearly imagine what the record is going to look like while in the midst of the deposition and react accordingly. ■

Fitzgerald T. Bramwell is the principal at the Law Offices of Fitzgerald Bramwell, a litigation firm serving clients in the Chicagoland area. Yana Karnaukhov works for the U.S. Department of Housing and Urban Development

WALK A MILE IN HER SHOES

The YLS has teamed up with Walk a Mile in Her Shoes® to organize a unique walk for men through Chicago's Loop. Men are invited to literally walk one mile through Chicago's Loop in women's high-heeled shoes (women are invited to participate and support the male walkers). The event aims to raise awareness about the cause and effects of sexualized violence and will be a fun way to get people talking about a very difficult subject. Go to www.chicagobar.org/walkamile for more information.

The YLS thanks the following for their generous support of the monthly socials throughout the bar year:

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Ogletree Deakins Nash Smoak & Stewart PC

YLS Chair
continued from page 38

In 2003, I moved to Chicago for law school without family and friends. Over time, the CBA and its members have become my family. I am thankful for everyone I have met and known over the years. The CBA offered a warm and inviting arena to learn, socialize, and network. Thank you to Terry Murphy, Beth McMeen, and all past Presidents and Chairs for paving the way for future Chairs and YLS members.

As a YLS member, I have had the fortune of meeting a Supreme Court Justice, Appellate Court Justices, and countless Judges. I have coordinated numerous projects and organized presentations. I am thankful for each social event and networking opportunity. But I am most thankful that I met my wife Kaitlin after a YLS poker tournament. Neither Kaitlin nor I fully understood what this year would entail. My duties to the CBA, YLS, and work seemed overwhelming. It certainly was a major time commitment taking me away from family. Kaitlin was extremely supportive of the role and dedication to the YLS. Thank you so much for understanding and allowing me the opportunity to serve.

As my year as Chair draws to a close, I invite you to participate in our Walk a Mile event on May 28, 2015 and to join me at the YLS annual luncheon on June 10, 2015, and welcome Matt Passen as Chair of the YLS. Although the year is almost over, you still have time to participate and give back to the community. I have nothing but love and appreciation for the YLS, its members, and everything its stands for. I wish you the best! Thank you for allowing me to be a member and for giving me the chance to serve you as Chair. ■

UPDATE YOUR MEMBER PROFILE

If you recently moved to a new firm, got a new email address or added a new practice area, please take a moment to update your member profile at www.chicagobar.org. And while you're at it, add yourself to the CBA's online member directory, a great new way to connect with fellow members, market your law practice, find law school classmates and more.

LEGAL ETHICS

BY JOHN LEVIN

Non-Lawyer Legal Practitioners– A Coming Trend

The previous column discussed the lack of affordable legal services to the middle class, even though there appears to be a surplus of lawyers available to provide those services. One reason for this situation is that the cost of obtaining a law degree (in both time and money) is so high that the fees necessary to recover and earn a return on the investment require a fee structure that prices legal services out of the reach of many.

The use of licensed paralegals has lowered some of the costs of providing legal services, but paralegals must work under the direction of a lawyer. Another solution to this problem is to create a new class of legal provider–analogous to a nurse practitioner or physician's assistant in the medical profession–who can perform certain services without supervision. This class of provider would be trained at a lower cost than attorneys and could provide limited services at a lower fee. This is the topic of many discussions in the blogosphere and is the subject of an extensive note in the Cardozo Law Review [35 Cardozo L. Rev. 2043 (June 2014)].

The State of Washington supreme court recently adopted a rule allowing the licensing of "Limited License Legal Technicians". These practitioners will be able to provide legal assistance, including advice to unrepresented litigants, but will not be able to represent litigants in court. The program to license these practitioners in specific areas of the law in currently in progress. Arizona has provided for "Certified Legal Document Preparers" who can perform certain functions normally performed by lawyers. California has instituted the categories of "Legal Document Assistant" and "Unlawful Detainer Assistant" with similar capabilities.

There are two ways of looking at the economic impact of such programs on the legal profession. In a macro view, the programs should have a minimal impact. By far, the majority of people using a "legal technician" would otherwise go unrepresented. In fact, much as a nurse practitioner may refer a particular case to a physician, there will be instances where the legal technician will refer cases that otherwise would never receive attention to lawyers.

On the other hand, in a micro view, there will no doubt be cases where the specific client will refer a simple matter to a legal technician rather than a lawyer simply because it is cheaper. These situations will either take business away from a lawyer, force the lawyer to reduce fees to match that of the technician, or encourage the lawyer to have technicians on staff to perform the work (much as doctors have nurse practitioners on staff).

To date, the organized bar has not been uniformly supportive of the development of non-lawyer legal practitioners. Support has come from the bench and the lay public. The consensus in the press and blogosphere, however, is that more and more jurisdictions will provide for the licensing of non-lawyer practitioners. The bar should prepare for the change. ■

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

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

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

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.

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ETHICS EXTRA

BY JUNIRA CASTILLO

Malpractice Statute of Repose Applies to Non-Clients as Well as Clients

The law was well–settled before *Evanston Insurance v. Riseborough, 2014 IL 114271*, that the statute of repose in Section 13-214.3 of the Illinois Code of Civil Procedure (735 ILCS 5/13.214.3) applied to claims against lawyers for professional misconduct asserted by clients. Whether the statute applied to claims against lawyers for professional misconduct asserted by non-clients was unsettled. That issue is no longer unsettled. In *Evanston Insurance* the Illinois Supreme Court rejected the holdings of Illinois appellate courts and federal courts that limited the statute of repose to claims against lawyers for professional misconduct asserted by clients. *Evanston Insurance* held that the statute of repose applies to claims against lawyers for professional misconduct by both clients and non-clients.

Section 13-214.3, is both a statute of limitations and a statute of repose. A cause of action for professional misconduct by lawyers accrues for purposes of the statute of limitations when the potential plaintiff knows or reasonably should know that a wrong was committed and thus must make inquiry as to whether the potential plaintiff has a cause of action. A cause of action accrues for purposes of the statute of repose when the lawyer commits the misconduct. Under *Evanston Insurance*, the statute of limitations and statue of repose under Section 13-214.3 applies to both clients and non–clients.

Junira Castillo is a 2014 graduate of The John Marshall Law School where she was a Morrissey Scholar.

Brief Summary

In *Evanston Insurance*, in 1996, an employee of a subcontractor for the construction of a warehouse was injured. The injured workman brought a personal injury action against general contractor, Kiferbaum Construction (the Corporation) for the injuries incurred on the job. Defendant law firm, Jacobson & Riseborough (Riseborough) represented the Corporation. At the time of the accident the Corporation was a named insured under a number of insurance policies. Evanston Insurance Company had named the Corporation as an additional insured under the subcontractors' policies. *Evanston Insurance Company, 2014 IL 114271* at 2.

In 2000, the parties reached a settlement in the personal injury case. The insurers, however, disagreed as to who was responsible under the various policies. The insurers entered into an agreement, referred to by the parties as the "Fund and Fight Agreement," in which they agreed to contribute their respective policy limits to the fund settlement. Riseborough signed the agreement as the "duly authorized agent and representative of [the Corporation]."

In 2003, the Corporation's president filed an affidavit stating that he had no knowledge of the "Fund and Fight Agreement" at the time of its creation and that the attorney, George Riseborough, lacked authorization to sign the agreement on behalf of the Corporation. In 2009, the Corporation moved for summary judgment on the coverage issue. The trial court entered judgment in favor of the Corporation and against the insurer, finding that the Corporation had not given authority to Riseborough to sign the "Fund and Fight Agreement" on its behalf.

While the insurance coverage proceedings were still pending, on December 22, 2005, insurer Evanston filed a complaint against Riseborough. Evanston alleged breach of an implied warranty of authority, fraudulent misrepresentation, and negligent misrepresentation based on Riseborough's wrongful execution of the "Fund and Fight Agreement." The trial court dismissed Evanston's complaint without prejudice because the insurance coverage proceedings were still pending.

In 2009, Evanston filed an amended complaint reasserting its claims against Riseborough. Riseborough filed a motion for summary judgment, which the trial court granted on the basis that the action was barred by the six-year statute of repose. The Appellate Court reversed. The Supreme Court reversed the Appellate Court and affirmed the trial court's dismissal. It held that the statute of repose of Section 13-214.3 is not limited to claims asserted by a client, but also applies to claims asserted by non-clients.

Statute of Repose: Client & Non-Client Claims

Under Section 13-214.3, an action for damages based on tort, contract, or otherwise (i) against an attorney arising out of an act or omission in the performance of professional services *** may not be commenced *** more than six years after the date on which the act or omission occurred." 735 ILCS 5/13-214.3 (b), (c) (West 2008).

The precise scope of Section 13-214.3 had been a key area of confusion. In this case, Riseborough committed the malpractice when he signed the "Fund and Fight Agreement" without authority on October 23, 2000. Evanston filed its complaint on December 23, 2009. If the statute of repose of Section 13-214.3 applied to a non-client, it would bar Evanston's suit as having been filed more than three years after the expiration of the six-year period of repose.

Courts had interpreted the statute of repose to apply only to claims brought by clients. Under *Evanston Insurance*, Section 13-214.3 is not limited to claims asserted by a client, but also applies to claims asserted by non-clients. In reaching its

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LPMT BITS & BYTES

BY CATHERINE SANDERS REACH

Freedom to Choose: Keeping Multiple Operating Systems in Sync

Lawyers today have many choices when considering which devices to purchase for working at the office, at home, and in between. In a larger firm setting your office may issue Windows PCs as the standard supported device, or in a sole practice you might find that a Windows PC provides compatibility with your existing software. But, given a choice in smartphones, you may crave the newest Samsung Galaxy running the Android operating system, primarily because your daughter really seems to like hers. And, all the attorneys at the courthouse have an iPad. Should you try to run all of these different operating systems and can you stay in sync and stay efficient? Absolutely, though it does require a little know how.

A primary reason that you have choices is the pressure from the consumer market infringing on the enterprise. Bring-your-own-device (BYOD) uptake accounts for about 40 percent of U.S. enterprise employees, according to the latest statistics by Gartner.* Developers of traditionally business class software, such as Microsoft, are recognizing the need to develop for multiple operating systems and make their software available through the browser, as well as a download. This is good for end consumers, whether for personal or business use, because it gives you more choices at a variety of price ranges for the devices you carry.

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

Workflows: Integrations and Apps

The trick with using multiple operating systems and keeping everything in sync is to find the programs that allow you to keep data connected, even if the app is not available for one of your devices. For instance, Penultimate is a notepad/handwriting app available for iPad only. However, it is owned by Evernote. You can use your iPad to take notes with Penultimate, which automatically syncs to Evernote, which is then available via a browser, installed and synced to your Windows PC, and on your Android phone. Since the iPad is the device you would most likely use for the notes, and then they are available on all your devices, this makes sense. It is this kind of fluidity that you must look for when you are a multi-OS user.

One way to easily manage workflows and interconnections on multiple operating systems is to start with your primary machine and then find the ways to connect it with your mobile devices. Say, for instance, you use a MacBook Pro as your primary computing device (your power machine). Identify all the things you need to be installed locally or available over the cloud on that machine. Then you connect it with your Chromebook and your BlackBerry (hey, this is just an example!) by either using native apps that sync with the primary account through the Cloud or via a mobile browser or serving the data from your office to your devices. Let's look at each of these options a little more closely.

Installs, Apps and the Cloud

More and more you will find that the primary software you use, including Microsoft Office, your accounting software and your practice management software, provide many options for remote access and using them on the go. Microsoft's Office is a good example of software that is now available on many platforms and connected through cloud services. In the few years Microsoft Office 365 has been available we have seen a software suite move from a "only at my desktop" to "edit anywhere on anything". Well, almost. Microsoft Office (Excel, PowerPoint & Word) now has versions for local install on Macs and Windows PCs, as well as apps for Windows Mobile, Android, and iOS. You can retrieve, save, and access files through Microsoft's OneDrive or DropBox on most devices. If you have a free Office.com account you can get the apps for free, with some limitations in functionality. Why the limits? Because Microsoft would like for you to get their subscription-based version of Office, which is called Office 365. With Office 365 Business Premium you can get 5 installs of the Office software, including Windows and Mac versions, plus the apps fpr $12.50 per user per month. Of course, the default file storage is MS OneDrive, though if you have apps for Box, DropBox, or Google Drive you can easily save to these as well.

Let's talk about email, calendar and contacts. There are many ways this information can be shared across devices, but one of the most seamless ways is to use Microsoft Exchange, which is available as a local server, a hosted server, or with your Office 365 account. Why? Because you will have wide availability and bi-directional synchronization with almost any device and browser access. Even without the MS Outlook software you can easily get your email, contacts and calendars on your mobile device's native apps (the ones that came installed on the device). However, now MS Outlook is available as an app for iOS and Android, and you can set it up with Exchange, Outlook.com (f/k/a Hotmail), iCloud, GMail and anything with IMAP (mail from your ISP). You can similarly set up Google for Work, with web access and native apps for most operating systems.

For MS Office or Google for Work you

With some planning it is quite possible to use many operating systems on many devices and work from a combination of these devices as the situation demands. While more storage can be purchased for mobile devices, the best plan is to identify the one machine, whether it be a local PC or Mac or cloud file storage, where all information is stored so that it can be easily backed up and replicated when a new device is added. The choice is yours!

have lots of choices and options to work with practically any operating system, with apps, mobile web, and installs all at the ready. But what about the other products you rely upon to get work done at the office? The integration and app availability begin to narrow, though you can still get plenty of work done if you plan accordingly.

If you are using a web-based practice management system (PMS) you are accessing and working with files through a browser. Smaller screens may make this tedious, so you will want an app - if it is available. While the PMS may have a mobile friendly version or an iOS app, they may be more limited in their functionality - as many native apps are. Most of the cloud based PMSs do not have a native Windows or Android app. You will need to decide what you need to do on those systems when you are not at your primary machine to ensure you can work on what you need to, when you need to.

While you can access and save files easily from most cloud file storage hosts (Dropbox, OneDrive, Box, GoogleDrive, iCloud) using a web-based document management system will need some consideration for how and where you will use it. For instance, NetDocuments is a browser-based document management system with tight integration with MS Office software. They also have an iOS app for iPad and iPhone. However, if you are on an Android or Windows Mobile device you will need to use the browser, and it is

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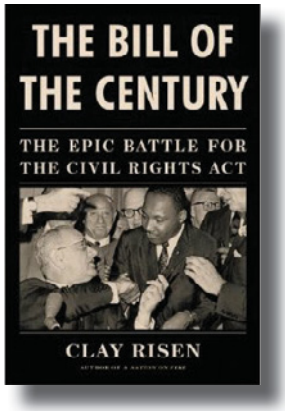
SUMMARY JUDGMENTS

REVIEWS, REVIEWS, REVIEWS!

The Bill of the Century



The Bill of the Century: The Epic Battle for the Civil Rights Act
By Clay Risen
Bloomsbury Press, 2014

Reviewed by Daniel A. Cotter

This year, we celebrated the 50th anniversary of the passage of the Civil Rights Act of 1964. The Act was initially introduced by President John F. Kennedy. Upon his assassination, President Lyndon B. Johnson recommitted to passage of a civil rights bill. It is one of the landmark pieces of legislation passed in modern times.

In *The Bill Of The Century,* author Clay Risen gives the reader a close look at the legislation's rough road to passage. Risen opens with a few vignettes of the stories of African Americans on July 3, 1964, being able to frequent public places that a day before were off limits to them. He also describes some of the resistance that ensued.

Risen acknowledges the important contributions of President Johnson and Martin Luther King, Jr. to the enactment of the landmark legislation. At the same time, he reminds us that these two men had a broad supporting cast in Washington, DC and throughout the nation. He also reflects on the complexities of the political process, national opinions and the legislative process and reconciliations that take place between the U.S. Senate and U.S. House of Representatives.

Chicago Connections

Two people with Chicago connections played large roles in the bill eventually becoming law–Nicholas Katzenbach and Everett Dirksen. Katzenbach was a professor of law at the University of Chicago from 1956 to 1960, when he became an Assistant Attorney General of the Office of Legal Counsel. In 1962, he became Deputy Attorney General. In that role, he worked on a number of civil rights matters, including the "Stand in the Schoolhouse Door" incident at the University of Alabama.

Risen recounts that by mid-1963, the Justice Department leadership, including Katzenbach, "had concluded that comprehensive federal civil rights legislation was now imperative." The challenge for the administration was how far any legislation could go and still pass. Katzenbach, after a meeting with Robert Kennedy and others, noted "'We needed a law with a workable public accommodation section, not a Christmas tree that would never become law.'"

Katzenbach began the process of strategizing how to get a bill through Congress and onto Kennedy's desk for signature. Risen discusses the pushback from House and Senate members and paring back of language, with Katzenbach navigating the chambers. When Kennedy was assassinated, President Johnson said, "Let Us Continue." In his speech to the nation on November 23, 1963, he paid tribute to Kennedy, stating, "'No memorial oration or eulogy could more eloquently honor President Kennedy's memory than the earliest passage of the civil rights bill for which he fought so long." He asked Katzenbach to get it done.

One of the key members of Congress whom Katzenbach and the administration worked with was U.S. Senator Everett Dirksen. Southern Democratic Senators engaged in a filibuster that would last 54 days to block passage of the bill. Republican Dirksen, along with three other senators, introduced slightly weaker substitute legislation. The substitute bill passed, and the House-Senate conference committee adopted the Senate version.

On May 19, after the conference, Dirksen called a meeting of reporters and gave "a little sermon". Responding to a question about why he had changed his views and supported the bill, "he said that 'no army can withstand the strength of an idea whose time has come.'" He then worked to obtain the Republican votes required to obtain cloture. On July 2, 1964, President Johnson signed the Civil Rights Act into law, an act that "revolutionized American society by placing the federal government undeniably and forcefully on the side of African Americans."

Risen has produced a detailed, informative narrative and an important read. It is recommended to all readers as a reflection of what Congress and the White House are capable of when determined to make positive change. On April 30, the CBA co-hosted a gala event with other bar associations to reflect on the importance of this Act and the Voting Rights Act of 1965 and why they remain relevant to our times. ■

Daniel A. Cotter is Vice President, General & Secretary at Fidelity Life Association, and a member of the CBA Record Editorial Board.

Lend A Hand: Remarks of Inauguration by then President Demetrio continued from page 17

limited opportunities available to mainstream society. Most often, these targeted youths are living in public housing complexes that present constant challenges to their physical and emotional well-being. Mentoring programs link these children with adults who are positive, supportive role models.

Many fine mentoring programs exist in Chicago. Some of the not-for-profit programs with which the CBA is considering affiliation include CYCLE (Community Youth Creative Learning Experience), the Boys and Girls Clubs of Chicago, Big Brothers-Big Sisters, and CREW (Chicago Real Estate Executive Women).

While each organization has a distinctly structured-program, their goal is singular: to meet the needs of children. There is need for career counseling, education, self-esteem enhancement, behavior modeling, and simple companionship. Activities include field trips to work places and popular downtown locations, tutoring sessions, school presentations, and engaging in supportive conversation. The common characteristic of all these programs is the providing of constructive and regular contact with youths who are seeking to grow beyond the isolation and despair of their neighborhoods.

Like all youths, those living in the projects possess a tremendous pool of talent, intelligence, and commitment to hard work that will, with guidance, improve their community as well as their own individual lives. These youths, who live on the edge of survival, offer a unique and powerful perspective of life: a strength and courage required in the face of overwhelming adversity, and first-hand knowledge of the obstacles that minorities and the poor encounter in their quest for inclusion in the American dream. It is a perspective we cannot afford to ignore. Including it among the growing diversity of perspectives represented in our legal community can only enhance our own experience as we strive to maintain a thriving city—while preparing it for the next century.

Clearly, the CBA can be a source of light to the youths who are most vulnerable and most insecure about their future. Indeed, the legal community, which is itself symbolic of the rewards of hard work, responsibility, higher education, and a commitment to ideals, is uniquely qualified to mentor.

It is within our power to help future generations by helping lead today's disadvantaged youths. We must not let these young people continue to be demoralized and conquered by the negative forces of drugs and violence that surround them. While there are no guarantees of success, we can make every attempt to be guiding beacons to the young men and women whose own unique gifts have the potential of enriching our community and brightening the future of Chicago.

Throughout our lives, each of us has received a helping hand from at least one person who really cared. My own list is endless. I invite you to join Abe Marovitz, Tony Valukas, Don Hubert—and many others—in giving our inner-city youth an opportunity to become the best they can be. These children need our help. I sincerely hope that you will lend them your hand—and your heart.

To find out more about how you can make a difference, go to lawyerslendahand.org.

Murphys Law continued from page 24

a partner at Chapman and Cutler LLP…**Oliver A. Khan** was named an associate at Arnstein & Lehr, LLP…**Matthew L. Willens** has been admitted into the National Association of Distinguished Counsel…**Sara A. Weinberg** is a partner at Dinsmore & Shohl LLP…**Lauren A. Morris** is a new associate at Horwood, Marcus & Berk, Chtd….**Julianne M. Hartzel** has been named Chair of Marshall, Gerstein & Borun, LLP's medical devices group…**Thomas L. Holt** has been named a partner at Perkins Coie, LLP…**Bradley M. Cosgrove** has been elected to the American Board of Trial Advocates…**William J. Cook** has become a partner at Reed, Smith, LLP.

Condolences

Condolences to the Family and Friends of **Richard T. Ryan, Elinor P. Swiger, Lawrence T. O'Brien, Patrick E. Mahoney, and Maureen T. McIntyre.** ■

Sit Down, Shut Up continued from page 14

As lawyers, virtually all of our professional activities are both analytical (we're trying to figure out the best way to help our clients, win the case, one-up opposing counsel, etc.) and goal-oriented (we want to win the case, get the settlement, help make new law, etc.) Come to think of it, most of our personal activities are both analytical and goal-oriented as well. Since meditation is neither analytical nor goal-oriented, it's probably one of the most counter-intuitive, radical, and refreshing things we could ever do. It completely turns our drive on its head. Since lawyers are notoriously driven people, dropping that drive for even a few moments can bring a tremendous sense of relief.

Of course, even though we do not sit in meditation with any particular goal in mind, meditation has obvious benefits. Most people report feeling significantly relaxed after they first attempt meditation. There have been numerous scientific studies detailing its positive effect on the brain. It helps with concentration, helps teach us about the inevitable nature of change, and helps us to see the insubstantial nature of our thoughts. Lawyers in the midst of a feud with opposing counsel could particularly benefit from this last one!

I now meditate on a daily basis, work one-on-one with a Zen teacher, and practice periodically at a Zen monastery. Admittedly, I may have taken things a little overboard. However, we do not need to go to extremes to benefit from meditation and mindfulness. ■

Jessica Fayerman, a senior employment law attorney at The Prinz Law Firm, P.C., led the Alliance for Women's March 24 lunch presentation "Sit Down and Shut Up: How Mindfulness Can Minimize Stress and Maximize Efficiency"

WHAT'S YOUR OPINION?

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

Ethics Extra
continued from page 49

holding, the Illinois Supreme Court also stated that under the express language of the statute, "it is the nature of the act or omission, rather than the identity of the plaintiff, that determines whether the statute of repose applies to a claim brought against an attorney."

Commentary

Evanston Insurance re-emphasized two important thoughts for practitioners: First, the statute of repose is unforgiving; second, unsettled questions of law are hazardous. Evanston Insurance knew or should have known that Section 13-214.3 of the Code of Civil Procedure applied to its claim against Riseborough and that it was ambiguous, thus unsettled. It should have protected itself. Initially it did protect itself but then apparently failed to protect itself. The opinion provides a reminder to practitioners that they must exercise caution in unforgiving and unsettled areas of the law. ■

Commercial Drones
continued from page 36

agriculture operation. This could prevent investigative journalists from photographing a farm as part of an investigative story on agri-business. Texas prohibits taking photographs of private property "with the intent to conduct surveillance," which might prohibit investigative journalists from using drones over private property.

Several states have enacted legislation regarding the private use of drones. In an interesting twist, Illinois makes it a crime to use a drone "that interferes with another person's lawful taking of wildlife or aquatic life." In addition, at least 26 states have laws requiring law enforcement to obtain a warrant before using drones, such use by law enforcement being beyond the scope of this article.

When the FAA does allow commercial use for drones, the use will be subject to right of privacy claims, intrusion upon seclusion, and right of publicity for images captured by the drones.

What, then, should a lawyer tell a client who wants to use drones for a commercial use?

The client should be told that the FAA bans commercial use of drones in the United States. The client could apply to the FAA for an exception by obtaining a special airworthiness certificate or for a certificate of waiver and authorization. Either process requires a detailed filing, public input, and time. If client does not want to file for a waiver, she could develop the commercial use outside the United States in countries that allow commercial use of drones. Or the client could wait until the picture becomes clearer, watch others announce their plans to use commercial drones, and hope that no one develops and pre-empts the client's use before the FAA announces its proposed rules and the rules are adopted. ■

Richard C. Balough has written extensively on technology and privacy issues. He is co-chair of the Global and Connected Devices Subcommittee of the American Bar Association's Cyberspace Law Committee. He is a former chair of the CBA's Computer Law Committee

Law Practice Management
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worth testing to see how easy it is to open, edit, and save a document in the browser edition on a mobile device without a native app. NetDocuments offers a work-around for Android users with a third party tool called FolderSync™ by Tacit Dynamics.

More and more accounting systems are going to the cloud, so Freshbooks, the venerable QuickBooks, and the up-and-coming Xero are now available through a browser and have native apps. All of the above have apps for iOS and Android. ■

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Public Service & Practice-Ready Experience

John Marshall Community Legal Clinics Raise the Bar in Legal Education

Chicago's law schools have always been leaders in clinical educational experiences that benefit both the community and students. The John Marshall Law School continues that proud tradition, with the addition of eight legal clinics to its nationally recognized fair housing and veterans programs. With one of the most robust clinical education requirements in the country, John Marshall sets the standard for training students to practice the law, while instilling the higher ideals of public service.

The John Marshall Community Legal Clinics provide *pro bono* services across a variety of legal issues, in 10 fields of practice: Business Enterprise Law; Conflict Resolution; Domestic Violence; Fair Housing; Immigration; International Human Rights; Patent; Pro Bono; Trademark; and Veterans.

"The clinical program is really designed with two goals in mind," said Anthony Niedwiecki, associate dean of Skills, Experiential Learning & Assessment, at John Marshall. "The No. 1 goal is to provide students with real practice experience working with real clients on real issues. The second goal is – because we really consider ourselves to be a community-based law school – we want to make sure that we provide legal services to the community."

Giving Back to Chicago

Every year, John Marshall's Community Legal Clinics contribute an estimated $5.8 million to various communities in and around the city of Chicago. The support doesn't come in the form of a check. It comes in the hours that John Marshall students and staff attorneys dedicate in *pro bono* work through John Marshall's legal clinics.

Each John Marshall student must provide 168 hours of *pro bono* legal services before they graduate. With this requirement, students provide more than 58,800 hours per year, for over $5.8 million in legal service (assuming a low rate of $100 for a law clerk in Chicago).

John Marshall's Fair Housing Clinic has been doing just that since for more than 20 years. The Clinic partners with local and federal fair housing agencies and organizations, including the U.S. Department of Housing and Urban Development, to combat the problem of housing discrimination.

"You teach students how to practice law and to educate members of the community on what fair housing laws are all about," said Allison Bethel, director of the Fair Housing Clinic.

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In the Veterans Legal Clinic, students work on all aspects of Veteran Benefits Administration claims, from the initial, factual intake to the technical representation of claims at the appellate level.

"The students are the ones who talk to these vets all the time," said Brian Clauss, executive director of the Veterans Legal Support Center & Clinic. "They're the first people who take that call."

Joseph Wagner spent five years in the Marines working as an aviation support equipment mechanic. After his tour, he earned a bachelor's degree from Illinois State University and then enrolled at John Marshall, where he began working in the Veterans Legal Support Center & Clinic.

"The staff attorneys are great, they're very knowledgeable," Wagner said. "You learn a lot of fundamental skills in the veterans clinic." Wagner graduated in 2014 and now works as a contracts officer at JPMorgan Chase.

Preparing Students to Practice from Day One

The practical training John Marshall students receive helps fulfill the school's mission of providing access to legal services, while equipping them with the skills employers need. The training students receive in part through John Marshall's clinics has been deemed among the best in the country, earning an A- from The National Jurist magazine.

John Marshall requires more practical training – by credit hours – than many other law schools in the nation. Niedwiecki called the high rank from National Jurist a testament to John Marshall's mission of getting law students out of the classroom and in front of clients and cases.

"We have been ahead of other law schools in assessing what employers want and how to prepare our students to meet those evolving needs," Niedwiecki said." The best part is that so many of our students receive incredible hands-on training by contributing back to those in need in their community."

To learn more about John Marshall's Community Legal Clinics, go to *www.jmls.edu/clinics* or call 312.427.2737.

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